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# Henry Goudy, Hannis Taylor, and Plagiarism Considered as a Fine Art

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## I. INTRODUCTION: ROOSEVELT, TAYLOR AND GOUDY

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\* Professor of Civil Law, University of Edinburgh. This article is dedicated to Professor Boudewijn Sirks to mark over thirty years of friendship. It was initially intended as a contribution to his *Festschrift*, but family illness led to me being unable to complete it in time. I am indebted to Dr Adelyn Wilson of Aberdeen and Ms Georgia Chadwick of the Law Library of Louisiana for furnishing me with a copies of material unobtainable in Edinburgh, and to Professor Jean-François Gerkens of Liège for supplying me with material about Fernand De Visscher to which I did not have access, and to Dr Catherine Jones of Aberdeen for the suggestion as to why Goudy gave the title he did to his review of Taylor's book. I am grateful to the following for access to manuscript and other material in their care or ownership: the National Library of Scotland; the Keeper of the Advocates Library, Edinburgh; the Department of Special Collections, Leeds University Library; the Centre for Research Collections, Edinburgh University Library; Archives de l'Université Catholique de Louvain; the Scottish Conservative and Unionist Association.

On Tuesday June 7, 1910, Henry Goudy (1848-1921), Regius Professor of Civil Law in the University of Oxford, presented Theodore Roosevelt (1858-1919) for the degree of Doctor of Civil Law, *honoris causa*.<sup>1</sup> Roosevelt's term as President of the U.S.A. had ended in 1909 and he had subsequently progressed through Africa on his famous extended safari, before journeying across Europe to Great Britain – meeting the Pope, the Kaiser, and various other crowned heads on the way. He was lionized wherever he went. The British press had eagerly followed his tour.<sup>2</sup> It had been intended that May 18, 1910 should be the day that Roosevelt both deliver the Romanes Lecture at Oxford and have the degree conferred upon him;<sup>3</sup> but the death of the King on May 6 led to postponement. K.A. von Müller, a German Rhodes scholar, recalled Goudy as “quiet and dignified in his long gown, with his head like that of a carving of a Roman Emperor.”<sup>4</sup> The Regius Professor was generally found an impressive man with a distinct presence that enhanced his performance of such university ceremonies.<sup>5</sup> His Latin *laudatio* for Roosevelt ranged over the former President's military endeavours with the “Rough Riders” in the Spanish-American War, his love of hunting and the natural world, and his role in helping bring peace between Japan and Russia.<sup>6</sup>

Roosevelt's Romanes Lecture was entitled “Biological Analogies in History.” As the title suggests, there is clear influence from Darwin's thinking, but his historical analysis is complex and sophisticated in its exploration of race, ethnicity, nation, and

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<sup>1</sup> *Mr. Roosevelt at Oxford*, THE TIMES, June 8, 1910, at 9.

<sup>2</sup> EDMUND MORRIS, COLONEL ROOSEVELT 3-26, 29-59 (2011).

<sup>3</sup> *Mr. Roosevelt's Visit*, THE TIMES, May 4, 1910, at 13; MORRIS, *supra* note 2, at 74-77.

<sup>4</sup> K.A. VON MÜLLER, AUS GÄRTEN DER VERGANGENHEIT: ERRINERUNGEN 1882-1914, 342 (1951). From a prominent Bavarian family, Müller became Professor of History at Munich, and later a prominent historian under the Nazis: MATTHIAS BERG, KARL ALEXANDER VON MÜLLER: HISTORIKER FÜR DEN NATIONALSOZIALISMUS (2014).

<sup>5</sup> *Obituary: The Late Professor Goudy*, 39 OXFORD MAG. 273, 273 (1920-21); F. de Zulueta, *In Memoriam. Henry Goudy*, 7 TRANSACTIONS OF THE GROTIUS SOC'Y xxii, xxiv (1921) (comparison suggests the obituary in the OXFORD MAG. is probably also by De Zulueta).

<sup>6</sup> *Mr. Roosevelt at Oxford*, THE TIMES, June 9, 1910, at 8.

Empires: he thought the only justification of the last was the paternalistic desire to do good to the people governed. A thoughtful lecture, it reveals Progressive anxieties about disparities between wealth and poverty.<sup>7</sup>

It is unknown if Roosevelt had any conversation with the dignified Ulsterman of Scots education and descent who presented him for the degree; it is interesting to speculate on what they might have discussed. But, with luck, they would have avoided the topic of Hannis Taylor (1851-1922), an ambitious and thrusting man who lived on the fringes of power in the United States of America. Taylor had served as American Envoy Extraordinary and Minister Plenipotentiary to Spain in 1893-97; in 1902 he was appointed special attorney to the U.S. lawyers acting before the Commission that dealt with claims arising out of the Spanish-American War; in 1903 he was one of the U.S. counsel before the Alaskan Boundary Tribunal in London; he acted as a part-time professor of law at George Washington University from 1904-6; he was editor of the *American Law Review* from 1906-7; he also taught law at Georgetown at least between 1912 and 1916; and he was closely involved with the Catholic University of America.<sup>8</sup>

Taylor was classed by his modern biographer as a “New Southerner,” that is, one committed in the later nineteenth century to reform and development in the South. Born in North Carolina, Taylor’s career was as a lawyer in Mobile, Alabama, before ambition finally led him to move to Washington.<sup>9</sup> Beyond his biography, Taylor’s continued minor presence in recent scholarship is, first, because of his

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<sup>7</sup> THEODORE ROOSEVELT, THE ROMANES LECTURE 1910. BIOLOGICAL ANALOGIES IN HISTORY. DELIVERED BEFORE THE UNIVERSITY OF OXFORD JUNE 7TH, 1910 (1910). For an analysis, see D.H. Burton, *Theodore Roosevelt’s Social Darwinism and Views on Imperialism*, 26 JOURNAL OF THE HISTORY OF IDEAS 103, 115-118 (1965).

<sup>8</sup> T.S. MCWILLIAMS, HANNIS TAYLOR: THE NEW SOUTHERNER AS AN AMERICAN 49-52 (1978); YEARBOOK, GEORGETOWN UNIVERSITY LAW (1912); *Law Students to Banquet: Graduate Class at Washington to Gather This Evening*, WASHINGTON POST, May 20, 1916, at 7; F.M. Carroll, *Robert Lansing and the Alaskan Boundary Tribunal*, 9 INT’L HIST. REV. 271 (1987).

<sup>9</sup> MCWILLIAMS, *supra* note 8, at 7-20.

association with Father Abram J. Ryan, the poet of the “Lost Cause,” and, second, because of his role as a bit player in discussions of the background to the Spanish-American War.<sup>10</sup> For Taylor, the politics of the New South involved him in Progressive beliefs, and the move from Alabama to Washington to make a figure on the national stage came after a failed bid for election to Congress as a Democratic politician.

After meeting Theodore Roosevelt in 1902, Taylor attempted to ingratiate himself with the Republican establishment.<sup>11</sup> He certainly became an enthusiastic toady to Roosevelt: a role he played even after the former President’s death.<sup>12</sup> Thus, he had once presented a large mounted moose head to Roosevelt that the latter, in a charming letter, declined to accept. Taylor was quite unabashed.<sup>13</sup> Oliver Wendell Holmes, when an Associate Justice of the U.S. Supreme Court, described him to Sir Frederick Pollock as “a pushing man” who “flatters you people and has managed to receive degrees ... from Edinburgh & Dublin.” He stated that Taylor “swaggers and poses, and if he loses a case before us, I believe that he writes articles pitching into the Court, or has been known to.”<sup>14</sup>

Taylor was a prolific author on law, with a particular interest in the history of constitutions.<sup>15</sup> His legal writing supported his claims to preferment and position. Like his hero Roosevelt, he saw biology as significant in history. He thought the

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<sup>10</sup> D.R. BEAGLE AND B.A. GIEMZA, POET OF THE LOST CAUSE: A LIFE OF FATHER RYAN 1, 162, 167, 178, 188-89, 246, and 252-54 (2008); DAVID O’CONNELL, “FURL THAT BANNER”: THE LIFE OF ABRAM J. RYAN, POET-PRIEST OF THE SOUTH 140, 202-3 (2006); MCWILLIAMS, *supra* note 8, at 9-10; D.H. DYAL, HISTORICAL DICTIONARY OF THE SPANISH-AMERICAN WAR 317-18 (1996); D.S. MARGOLIES, HENRY WATTERSON AND THE NEW SOUTH: THE POLITICS OF EMPIRE, FREE TRADE AND GLOBALIZATION 15, 145 (2006).

<sup>11</sup> MCWILLIAMS, *supra* note 8, at 34-85.

<sup>12</sup> *Tribute to Mother of Col. Roosevelt*, WASHINGTON POST, Sep. 1, 1921, at 2.

<sup>13</sup> MCWILLIAMS, *supra* note 8, at 51.

<sup>14</sup> Letter from O.W. Holmes to Sir Frederick Pollock (Oct. 18, 1908), in 1 THE POLLOCK-HOLMES LETTERS: CORRESPONDENCE OF SIR FREDERICK POLLOCK AND MR JUSTICE HOLMES 1874-1932, at 143-44 (Mark de Wolfe Howe ed., 1942).

<sup>15</sup> For a list of his publications, see MCWILLIAMS, *supra* note 8, at 130-35. Modern electronic resources would probably allow this to be supplemented.

British a superior “Teutonic” race with a particular genius for government, one inherited by the Americans.<sup>16</sup> There has been no modern discussion of his legal scholarship, and this is not the place for it. But in October 1908, Roosevelt, still President, wrote to Taylor:

I have always taken pride in your having played the role you have in public life, because there are not too many Americans who can both do their work in politics and diplomacy and at the same time do totally different work of real value in the field of literature and history.<sup>17</sup>

Taylor’s authorship was related to his pursuit of position and power. This was upset in January 1909, when Goudy very publicly exposed him as a plagiarist, creating a scandal that reverberated on both sides of the Atlantic, traceable through articles and correspondence in newspapers, personal correspondence, and legal periodicals.

Roosevelt’s comment was to take on an unintended ironic tone.

Henry Goudy is now largely forgotten; but he deserves study beyond that carried out for the limited account of his life in the *Oxford Dictionary of National Biography*.<sup>18</sup> To explain why Goudy felt so deeply about what he saw as the significant wrong done by Taylor it is necessary to examine his life. It is also important to reflect on contemporary debates about plagiarism in the English-speaking world as these provided a context for Goudy’s critique, while Taylor utilized them in defence of his supposed scholarship. It may even be that the scandal raised by Goudy about Taylor’s plagiarism may have helped clarify what was appropriate use of other people’s research and writing in scholarly works.

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<sup>16</sup> MCWILLIAMS, *supra* note 8, at 16-17.

<sup>17</sup> Found quoted in MCWILLIAMS, *supra* note 8, at 64.

<sup>18</sup> J.W. Cairns, *Goudy, Henry (1848-1921)*, in OXFORD DICTIONARY NAT’L BIOGRAPHY, <http://www.oxforddnb.com/view/article/50979> (last visited May 11, 2015) (subscription required).

## II. TAYLOR, THE SCIENCE OF JURISPRUDENCE AND GOUDY'S REVIEW

In 1908, Hannis Taylor published *The Science of Jurisprudence* with Macmillan in New York.<sup>19</sup> Dedicated to two leading British scholars, James Bryce and T.E. Holland, the book claimed to have one big and original idea: in modern times, legal systems were progressively adopting the private law of Rome and the public law of Britain.<sup>20</sup> Taylor claimed to have subjected his thesis to “the searching and approving criticism of a few of the most eminent jurists of the English-speaking world.”<sup>21</sup> He later asserted that he had sent the whole book in advance to Holland and Bryce. In fact he had only sent the preface, but not the whole book, to Holland, then Chichele Professor of International Law and Diplomacy, and a noted legal philosopher; this makes it probable that he had likewise sent only the preface to Bryce (sometime Regius Professor of Civil Law at Oxford, a historian and politician, currently British Ambassador to the United States), more especially since he himself stated that he forwarded the manuscript to Holland on its return from Bryce with Bryce's comments.<sup>22</sup> The preface, however, did set out his almost social-Darwinist general thesis, that dominance of Roman private law and English public law was due to their surviving as the fittest.<sup>23</sup>

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<sup>19</sup> HANNIS TAYLOR, *THE SCIENCE OF JURISPRUDENCE: A TREATISE IN WHICH THE GROWTH OF POSITIVE LAW IS UNFOLDED BY THE HISTORICAL METHOD AND ITS ELEMENTS CLASSIFIED AND DEFINED BY THE ANALYTICAL* (1908).

<sup>20</sup> *Id.* at [v], [vii]-xxii; R.A. Cosgrove, *Holland, Sir Thomas Erskine (1835–1926)*, in OXFORD DICTIONARY OF NAT'L BIOGRAPHY, <http://www.oxforddnb.com/view/article/33944> (last visited May 11, 2015) (subscription required); Christopher Harvie, *Bryce, James, Viscount Bryce (1838–1922)*, in OXFORD DICTIONARY OF NAT'L BIOGRAPHY, <http://www.oxforddnb.com/view/article/32141> (last visited May 11, 2015) (subscription required).

<sup>21</sup> TAYLOR, *supra* note 19, at xv-xvi.

<sup>22</sup> Letter from Hannis Taylor to the Editor (n. d.), *THE TIMES*, Mar. 11, 1909, at 19; letter from T.E. Holland to the Editor (Mar. 13, 1909), *Dr. Hannis Taylor and Dr. Goudy*, *THE TIMES*, Mar. 15, 1909, at 4; Harvie, *supra* note 20.

<sup>23</sup> TAYLOR, *supra* note 19, at xv. A modern comparative law scholar might well see it as containing some sort of reflection on legal transplants: Michele Graziadei, *Comparative Law as the Study of Transplants and Receptions*, in *THE OXFORD HANDBOOK OF COMPARATIVE LAW*, 441 (Mathias Reimann and Reinhard Zimmermann eds. 2007); J.W. Cairns, *Watson, Walton, and the History of Legal Transplants*, 41 GA J. INT'L & COMP. L. 637 (2013).

Suffice it to say that Taylor was always prone to make very big claims for his work and its originality. Thus, he claimed to have found the true origins of the U.S. Constitution in a pamphlet by Pelatiah Webster. He often repeated this, including in the *Science of Jurisprudence*. There he described himself as having had “the good fortune ... to unearth this epoch-making document” and as having presented it “to the jurists and statesmen of the world as if it were a papyrus from Egypt or Herculaneum.”<sup>24</sup> A reviewer remarked that these were “rather unfortunate” expressions, since “[t]he Pamphlet has been used by writers on constitutional problems for many years, and to the writer’s own knowledge it has been made the subject of special study in the historical seminary of one of our universities for at least a decade past.”<sup>25</sup> Others also noted that Taylor’s claim could not be accepted.<sup>26</sup> Harold Laski, for example, stated that the “impudent Pelatiah Webster myth has prejudiced me greatly against him.”<sup>27</sup> No doubt Taylor’s absurd and boastful comparison in 1908 had been stimulated by the strong current interest in the excavations at Oxyrhynchus.<sup>28</sup> He was certainly no B.P. Grenfell or A.S. Hunt.<sup>29</sup> But this starts to give us the measure of the man.

Taylor’s *Science of Jurisprudence* was widely reviewed. If some reviewers, such as those quoted above, expressed caution and emphasized the excessive claim about the Webster pamphlet, others were enthusiastic, taking at face value both his

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<sup>24</sup> TAYLOR, *supra* note 19, at xix, 458.

<sup>25</sup> J.H.D., Book Review, 7 MICH. L. REV. 282, 283 (1909) (reviewing THE SCIENCE OF JURISPRUDENCE, *supra* note 19).

<sup>26</sup> C.L. Jones, Book Review, 34 ANNALS AM. ACAD. POL. SCI. 216 (1909) (reviewing THE SCIENCE OF JURISPRUDENCE, *supra* note 19).

<sup>27</sup> Letter of H.J. Laski to O.W. Holmes (Dec. 28, 1916), in 1 THE HOLMES-LASKI LETTERS: THE CORRESPONDENCE OF MR. JUSTICE HOLMES AND HAROLD J. LASKI, 1916-1935, 47 (Mark DeWolfe Howe ed., 1953).

<sup>28</sup> Dominic Montserrat, *News Reports: The Excavations and their Journalistic Coverage*, in OXYRHYNCHUS: A CITY AND ITS TEXTS, 28 (A.K. Bowman, R.A. Coles, N. Gonis, and Dirk Obbink eds. 2007).

<sup>29</sup> E.G. Turner, *The Graeco-Roman Branch of the Egypt Exploration Society*, in OXYRHYNCHUS: A CITY AND ITS TEXTS, *supra* note 25, at 17.



claim to be “discoverer of the pamphlet” and his research on Roman and English law.<sup>30</sup> The *Virginia Law Register* was almost lyrical in its praise in November 1908:

Any book upon jurisprudence bearing the name of Hannis Taylor as its author would at once command attention. The present work is one absolutely original in method of treatment, and making, what at first glance might be considered a dull and well worn subject, as keenly interesting alike to lawyer and layman, as if written for entertainment of the one, as well as for the instruction of the other. To the treatment of his subject Mr Taylor brings a profundity of learning and depth of research ....

The hand of a master is apparent in these last chapters .... The book is an epoch making one, and must take a high place amongst the philosophical treatises upon jurisprudence.<sup>31</sup>

In the same month Roscoe Pound, then Dean of Northwestern University School of Law in Chicago, reviewed it more coolly in the *Illinois Law Review*. After describing the main theses and the structure and contents, he criticized Taylor’s approach to the “philosophical school,” while also noting that the “analytical portion of the work follows Holland.” He concluded: “In general, the student will find in this book a very readable exposition of the views of the English historical and analytical jurists.”<sup>32</sup> In *Law Notes* in December 1980, H.H. van Dyck described it as “a notable contribution to juridical literature.” He added that “[i]n depth of research and breadth of reasoning it probably surpasses any of Professor Taylor’s previous writings.”<sup>33</sup>

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<sup>30</sup> See, e.g., S.B.S., Book Review, 57 U. PA. L. REV. 128, 128-29 (1908) (reviewing THE SCIENCE OF JURISPRUDENCE, *supra* note 19).

<sup>31</sup> Book Review, 14 VA. L. REG. 574, 574-75 (1908) (reviewing THE SCIENCE OF JURISPRUDENCE, *supra* note 19).

<sup>32</sup> Roscoe Pound, Book Review, 3 ILL. L. REV. 253, 254 (1908) (reviewing THE SCIENCE OF JURISPRUDENCE, *supra* note 19).

<sup>33</sup> H.H. Van Dyck, New Books. A Typical System of Law, 12 LAW NOTES 174, 175 (1908) (reviewing THE SCIENCE OF JURISPRUDENCE, *supra* note 19).

One of the many people to whom Taylor sent an inscribed copy was Henry Goudy, accompanying it with “an all-too-flattering letter” about the professor’s own work.<sup>34</sup> After “a considerable interval,” according to Taylor, Goudy returned the copy “with an insulting note, in which I was informed that the writer intended to denounce it on account of the use I had made of the writings of ‘Professor Muirhead and Dr. Greenidge,’”<sup>35</sup> In January 1909, Goudy dropped the promised bombshell. In an article in the *Juridical Review*, he demonstrated exactly how the work had come to appear to surpass Taylor’s earlier writings in “depth of research and breadth of reasoning.” He entitled it “Plagiarism – A Fine Art.”<sup>36</sup>

Goudy started with an account of the meaning of *plagium* in Roman law, before moving on to the modern meaning of plagiarism. He noted that plagiarism was not a crime, so far as he knew, in any law code, though in Britain, under the copyright acts, “a man acquires a distinct property in his published writings, and for another man to appropriate these as his own, *lucri faciendi causâ*, is very much of the nature of theft.” Practical considerations, he suggested, rendered “the inclusion of plagiarism in a criminal code impracticable.” He added: “But though not a crime it is an offence in morals universally reprobated. I am going to call attention to a flagrant case of it.”<sup>37</sup> He referred to the recent publication of Taylor’s work, describing the author as “a prominent American” who had “been at one time a representative of the United States in Spain,” and who had “published books on *International Public Law* and other topics, some of which have apparently acquired great popularity.” He noted that the work “attempted to cover a large amount of ground” containing “*inter alia*, chapters

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<sup>34</sup> Letter from Henry Goudy to the Editor (Mar. 13, 1909), *THE TIMES*, Mar. 17, 1909, at 22.

<sup>35</sup> Letter from Hannis Taylor to the Editor (n. d.), *THE TIMES*, Mar. 11, 1909, at 19.

<sup>36</sup> Henry Goudy, *Plagiarism – A Fine Art*, 20 *JURID. REV.* 302 (1909).

<sup>37</sup> *Id.* at 302-303.

on ‘Jurisprudence and its Province Determined’ (well-known Austinian phrase), ‘External History of Roman Law’ and ‘External History of English Law.’”<sup>38</sup>

Goudy stated he had turned first to the lengthy (about 150 pages) chapter on Roman law. “[F]rom a rapid glance at the voluminous notes it contains,” he noted that the “statements in it ... were supported by references to authorities of the first rank.” He had hoped, he said, “to get some fresh light on the subject, or possibly some illuminating ideas.” He observed that “referred to in the notes, although very sparingly, is Professor Muirhead’s *Historical Introduction to the Law of Rome*, a work well known to students both in this country and abroad.” He added:

As editor of the second edition of that work, published in 1899, I am of course well acquainted with it, and it struck me, on reading Dr. Taylor’s chapter, that a number of his sentences had a strangely familiar ring about them. I then proceeded carefully to compare the two books, and I found, to my astonishment, that not only were the ideas of Muirhead appropriated wholesale, but that his very words, or words of my own in the notes, were in a vast number of cases reproduced, under a slight disguise, without the slightest acknowledgement. Nay, more, I found that a great mass of elaborate references in the chapter to continental authorities (French, German and Italian), have been taken bodily from Muirhead’s book without the slightest indication of ever having been consulted by Dr. Taylor at all. Even slips that I marked for correction in a new edition have been reproduced, while almost no reference (in fact, so far as I can see, none at all) has been made to continental authorities on Roman law later than 1899. Thus the recent editions (*i.e.* since 1899) of works cited by Muirhead or myself ... are left unnoticed, as are such

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<sup>38</sup> *Id.* at 303.

important works (just to mention a few) as Mommsen's *Theodosian Code*, Girard's *Histoire de l'Organisation Judiciaire*, vol. i., Roby's *Roman Private Law*, Mitteis's *Römisches Privatrecht*. In short, nearly the whole of Dr. Taylor's elaborate chapter I found to be gross plagiarism. Where he has not pillaged Muirhead, he has frequently appropriated the ideas and language of Sohm in his *Institutes* (Ledlie's translation, 1892, with Grueber's prefatory essay); frequently those of Greenidge in his *Roman Public Life*; sometimes those of other writers – usually, if not invariably, without the slightest acknowledgement.<sup>39</sup>

Goudy then proceeded to make good these claims over eight pages with extensive use of parallel columns to demonstrate the point, urging the reader to reflect on the “slight disguises that are adopted by the author.” He showed how, in one instance, Taylor had produced a nonsensical note because he did not understand the sources he was citing. With the parallel columns, he demonstrated very clearly Taylor's appropriation from James Muirhead's *Historical Introduction* (1899) and James Bryce's *Studies in History and Jurisprudence* (1901), while he also provided pinpoint references to show Taylor's copying from the popular *Institutes* of Rudolph Sohm (1841-1917) (currently Professor at Leipzig) in the first English-language edition (1892), translated by J.C. Ledlie (1860-1928) (barrister and Fellow of Lincoln College, Oxford), with an introduction by Erwin Grueber (1846-1933) (sometime All Souls Reader in Roman Law, currently a Professor in Munich) (second and third editions had appeared in 1901 and 1907, respectively), as well as from the work of the ancient historian, the late A.H.J. Greenidge (1865-1906), Fellow of Hertford College, Oxford.<sup>40</sup>

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<sup>39</sup> *Id.* at 303-304.

<sup>40</sup> *Id.* at 303-14. Muirhead and his works are discussed in detail *infra* text at notes 267-315; for Sohm, see [http://www.uni-leipzig.de/unigeschichte/professorenkatalog/leipzig/Sohm\\_1003/](http://www.uni-leipzig.de/unigeschichte/professorenkatalog/leipzig/Sohm_1003/) (last accessed Apr. 28, 2015); on Grueber, see J.W. Cairns, *English Torts and Roman Delicts*, 87 TUL. L. REV. 867,

Goudy concluded that a reasonable amount of borrowing of ideas is to be expected; but where the very words are borrowed, “especially of a writer whose copyright has not expired, it is universally expected, and but common honesty, to acknowledge the source.” Taylor “had gone altogether beyond the bounds of any conceivable legitimacy.” Goudy observed that in “hardly a single instance, out of scores, ... has any specific acknowledgement been made of indebtedness.” He characterized “the whole chapter ... as an imposture.” He commented that “the author is an honorary Doctor of Laws of two British Universities,” noting that “honorary degrees are not always conferred with discrimination, but it is regrettable.” (His role in presenting individuals for the degree of D.C.L. *honoris causa* at Oxford no doubt made him acutely aware of this.) Had it just been his own work that had been plagiarized, he added, he might have kept silent, “but the duty which I owe to my deceased master and friend compels me to write.” It is worth quoting his two final sentences in full:

Professor Muirhead devoted himself with unremitting toil to the study and exposition of Roman law, and did more probably than anyone last century to raise the standard of legal scholarship in this country. For this, indeed, he received no great recognition in his lifetime, by honorary degrees or otherwise – he in no way belonged to the class of superficial self-advertising writers upon whom honours are apt to be showered – but his writings were his own, and one must see that they are not wrongfully appropriated by others after his death.<sup>41</sup>

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878 (2013); R.W. Lee, *Greenidge, Abel Hendy Jones (1865–1906)*, rev. by Mark Pottle, in OXFORD DICTIONARY OF NAT’L BIOGRAPHY, <http://www.oxforddnb.com/view/article/33541>, (last accessed Apr. 28, 2015) (subscription required).

<sup>41</sup> Goudy, *supra* note 36, at 314-15.

Goudy's outrage is almost palpable. His anger at Taylor's behaviour and his scorn for the man still resonate powerfully over a century later. He pulled no punches in his assessment. He wanted it to be absolutely clear to his readers, beyond any doubt, that Taylor had committed a deliberate academic fraud. This was why "the slight disguises" were so significant. They showed Taylor was not naïvely simply copying; he was also trying to conceal his theft. It is perhaps unsurprising that Goudy had experienced some difficulty in finding a review that would publish his uncompromising critique of Taylor's book. Publishers were anxious about a potential libel suit. But as he had been the first editor of the *Juridical Review*, he knew the publisher, Charles Green, and Green agreed to take it, as did the editor, John Chisholm, a fellow member of the Faculty of Advocates in Scotland.<sup>42</sup>

### III. LIFE AND CAREER OF HENRY GOUDY

#### A. *Early Life and Education*

By origin, Goudy was an Ulsterman, descended from a line of Presbyterian clergymen. His father, Alexander Porter Goudy, was a notable minister and scholar, who had served as Moderator of the General Assembly of the Presbyterian Church of Ireland.<sup>43</sup> Goudy was also the great-grandson of James Porter, the famous Minister of Greyabbey executed in 1798 between his manse and his church. Goudy's grandmother's brother, Alexander Porter, became a judge of the Supreme Court in Louisiana and also represented the State in the U.S. Senate.<sup>44</sup> Goudy's mother,

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<sup>42</sup> Letter from Henry Goudy to the Editor (Mar. 13, 1909), *THE TIMES*, Mar. 17, 1909, at 22; Letter from Henry Goudy to the Editor (Mar. 17, 1909), *THE TIMES*, Mar. 19, 1910, at 14.

<sup>43</sup> Thomas Hamilton, rev. by David Huddleston, *Goudy, Alexander Porter (1809-1858)*, in *OXFORD DICTIONARY OF NAT'L BIOGRAPHY*, <http://www.oxforddnb.com/view/article/11129> (last visited May 11, 2015) (subscription required); M.M. GOWDY, A FAMILY HISTORY COMPRISING THE SURNAMES OF GADE ... GOWDY, GOUDY ... AND THE VARIANT FORMS FROM A.D. 800 TO A.D. 1919, 225-30 (1919).

<sup>44</sup> Samuel Bracegirdle, *The Reverend James Porter of Greyabbey*, 10 *NORTHERN IRISH ROOTS* 20 (1999); O.D.P. Waters, *The Rev. James Porter, Dissenting Minister of Greyabbey, 1753-1798*, 14

Isabella Ross, was the daughter of an Ayr merchant, and after his father's early death in 1858, she returned to Scotland with her numerous young children, where Goudy's schooling continued.<sup>45</sup> Goudy sustained an interest in Ayrshire and was an active member of the Edinburgh Ayrshire Club.<sup>46</sup>

Goudy was educated at the Universities of Glasgow and Edinburgh, graduating M.A. (in the class of mathematics) and LL.B. from the latter in 1869 and 1871 respectively.<sup>47</sup> In 1868, he was listed as third prizeman with honours in the final examinations in Civil Law.<sup>48</sup> In the same year he was prizeman in Senior Latin.<sup>49</sup> He followed this with a winter session studying at the University of Königsberg.<sup>50</sup> James Mackintosh, Goudy's successor at Edinburgh, who served as his assistant in the Edinburgh chair, described him as having found "German student life congenial," and as having "made some lasting friendships."<sup>51</sup> One identifiable friend from this period in Königsberg is Jacob Schipper (1842-1915), a distinguished expert on English philology and verse forms. Schipper, later a professor in Vienna, was newly appointed to a chair in the East Prussian university.<sup>52</sup> He was just slightly older than the young Scot. Almost certainly through Schipper, Goudy became friends with another German philologist, Alfons Kissner (1844-1928), who succeeded Schipper in Königsberg. In 1905 Goudy and Schipper together produced a collection of Kissner's *Poetische*

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SEANCHAS ARDMHACHA: J. ARMAGH DIOCESAN HIST. SOC'Y 80 (1990); W.W. Howe, *Alexander Porter*, 6 COL. L. REV. 237 (1906).

<sup>45</sup> Cairns, *supra* note 18.

<sup>46</sup> *Edinburgh Ayrshire Club*, THE SCOTSMAN, Jan. 26, 1878, at 8; *Burns' Anniversary, Edinburgh Ayrshire Club*, THE SCOTSMAN, Jan. 26, 1885, at 6; *Edinburgh Ayrshire Club*, THE SCOTSMAN, Mar. 13, 1886, at 9; *Edinburgh Ayrshire Club*, THE SCOTSMAN, Dec. 1, 1888, at 8.

<sup>47</sup> For the dates of his degrees, see *Installation of Chancellor and Graduation Ceremonial*, THE SCOTSMAN, Apr. 22, 1869, at 4; *University of Edinburgh. Graduation Ceremonial*, THE SCOTSMAN, Apr. 21, 1871, at 5. In ALPHABETICAL LIST OF GRADUATES OF THE UNIVERSITY OF EDINBURGH FROM 1859 TO 1889 (BOTH YEARS INCLUDED), 41 (Edinburgh, James Thin Publisher to the University, 1889) he is listed as graduating M.A. in 1870. This is presumably mistaken.

<sup>48</sup> *The University of Edinburgh. Prize List-Summer Session, 1868*, THE SCOTSMAN, Aug. 4, 1868, at 1.

<sup>49</sup> *Henry Goudy, M.A., LL.B.*, 4 THE STUDENT 81, 81 (1890).

<sup>50</sup> James Mackintosh, *Henry Goudy*, 34 JURID. REV. 53, 54 (1922).

<sup>51</sup> *Id.* at 54.

<sup>52</sup> See JACOB SCHIPPER, BEITRÄGE UND STUDIEN ZUR ENGLISCHEN KULTUR- UNDE LITERATURGESCHICHTE, 72, 111 (1908).

*Briefe* to mark his 60<sup>th</sup> birthday.<sup>53</sup> In 1911, Schipper dedicated a book to Goudy, marking their forty years of friendship.<sup>54</sup> Kissner was interested in Scottish songs and music generally, as well as in the work of Robert Burns.<sup>55</sup> With his proud Ayrshire roots, Goudy was also keen on Burns, and is found not only attending Burns Suppers, but also at another event proposing the toast, “the Memory of Robert Burns.”<sup>56</sup> Schipper’s philological interests and metrical concerns led him to study the great Scottish poet William Dunbar.<sup>57</sup> Apart from whatever else made them find each other congenial, it is obvious to see shared interests and concerns.

Goudy presumably went to Königsberg to pursue studies in Roman law, the *gemeines Recht* of Germany: Mackintosh described his doing so as rounding off his studies “in the traditional fashion.”<sup>58</sup> In the nineteenth century, quite a number of Scots of a scholarly cast of mind studied law in Germany.<sup>59</sup> Though perhaps a small proportion of the legal profession as a whole, it was a relatively high proportion of those who became university professors.<sup>60</sup> One can count among them Goudy’s teachers at Edinburgh James Muirhead and James Lorimer (1818-1890), who had studied law at Heidelberg and Berlin respectively, his colleague John Rankine, who

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<sup>53</sup> ALFONS KISSNER, *POETISCHE BRIEFE. GESAMMELT UND ALS MANUSKRIFT GEDRUCKT IHM ZU SEINEM VOLLENDETEN SECHZIGSTEN LEBENSJAHRE AM 3. APRIL 1905, DARGEBRACHT VON H. GOUDY AND J. SCHIPPER* (Henry Goudy and Jacob Schipper eds. 1905).

<sup>54</sup> JACOB SCHIPPER, *JAMES SHIRLEY: SEIN LEBEN UND SEINE WERKE. NEBST EINER ÜBERSETZUNG SEINES DRAMAS "THE ROYAL MASTER" ... MIT EINEM AUF DEM IN DER BODLEIANA ZU OXFORD BEFINDLICHEN PORTRÄT SHIRLEYS BERUHENDEN BILDE DES DICHTERS*, v (1911) (not seen); *Poetry*, *THE SCOTSMAN*, Nov. 2, 1911, at 2.

<sup>55</sup> *SCHOTTISCHE LIEDER AUS ÄLTERER UND NEUERER ZEIT, FÜR EINE SINGSTIMME MIT BEGLEITUNG DES PIANOFORTE. UNTER MITWIRKUNG VON L. STARK* (Carl and Alfons Kissner eds., Leipzig, J. Rieter-Biedermann 1874); *BURNS-ALBUM. HUNDERT LIEDER UND BALLADEN VON BURNS MIT IHREN SCHOTTISCHEN NATIONAL-MELODIEN FÜR EINE SINGSTIMME MIT CLAVIERBEGLEITUNG UND SCHOTTISCHEN UND DEUTSCHEM TEXT HERAUSGEGEBEN VON C. UND A. KISSNER UNTER MITWIRKUNG VON L. STARK* (Carl and Alfons Kissner eds., Leipzig, J. Rieter-Biedermann 1877).

<sup>56</sup> *Edinburgh Ayrshire Club*, *THE SCOTSMAN*, Dec. 1, 1888, at 8.

<sup>57</sup> JACOB SCHIPPER, *WILLIAM DUNBAR. SEIN LEBEN UND SEINE GEDICHTE IN ANALYSEN UND AUSGEWÄHLTEN UEBERSETZUNGEN NEBST EINEM ABRISß DER ALTSCHOTTISCHEN POESIE* (Straßburg, Karl J. Trübner 1884).

<sup>58</sup> Mackintosh, *supra* note 50, at 54.

<sup>59</sup> Alan Rodger, *Scottish Advocates in the Nineteenth Century: The German Connection*, 110 L.Q. REV. 563 (1994).

<sup>60</sup> J.W. Cairns, *James Muirhead, Teacher, Scholar, Book Collector*, in *THE MUIRHEAD COLLECTION CATALOGUE* pt. 1, 1, 4-5 (1999).



had studied at Heidelberg, as had Goudy's good friend John Kirkpatrick, Professor of Constitutional Law and History, who had there taken the degree of LL.D.<sup>61</sup> Goudy was later to serve as the best man at Kirkpatrick's wedding.<sup>62</sup>

*B. Admission as an Advocate and Practice at the Bar*

On November 22, 1872, Goudy was admitted as an advocate of the Scots bar.<sup>63</sup> In 1876, he developed a near-fatal illness; though he recovered, ill health was to dog him all his life, partly attributed to the "rigour of a severe winter" in Königsberg.<sup>64</sup> Thus, his poor health necessitated his spending the winter of 1906 in Egypt.<sup>65</sup> But he had an active life and never succumbed to valetudinarianism until towards the end; even his winter in Egypt gave him the basis of a public lecture in Oxford.<sup>66</sup>

James Mackintosh described Goudy's "practice as [having] steadily accrued."<sup>67</sup> Another observer commented on his "fair practice."<sup>68</sup> By 1887, David Dudley Field (1805-1894), the famous American proponent of codification and procedural reform, who was traveling in Great Britain and had met Goudy in Edinburgh, could describe him as "a prominent advocate."<sup>69</sup> It is possible to trace Goudy's activities as counsel in the printed court reports and through the pages of *The*

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<sup>61</sup> *Id.* at 4-5 (Kirkpatrick's Christian name erroneously given there as "William"); J.W. Cairns, *Lorimer, James (1818-1890)*, in OXFORD DICTIONARY NAT'L BIOGRAPHY, <http://www.oxforddnb.com/view/article/17016> (last visited May 28, 2015) (subscription required).

<sup>62</sup> *Marriage of Professor Kirkpatrick and Miss Frances Alma Smith*, THE SCOTSMAN, Sept. 4, 1907, at 6.

<sup>63</sup> F.J. GRANT, THE FACULTY OF ADVOCATES IN SCOTLAND, 1532-1943 WITH GENEALOGICAL NOTES 85 (1944). His M.A. and LL.B. degrees would have qualified him. He completed a short (MS) thesis on Roman law: "Disputatio juridica, Lib. XXXVIII. Tit. XVII. Digest. ad S.C. Tertullianum et Orphitianum," Advocates Library, Edinburgh, Faculty Theses, 1865-19873 (69). The topic was allocated to him. It contains nothing remarkable.

<sup>64</sup> De Zulueta, *supra* note 5, at xxii; Mackintosh, *supra* note 50, at 54.

<sup>65</sup> THE SCOTSMAN, Nov. 6, 1906, at 4.

<sup>66</sup> Henry Goudy, *Administration of Justice in Egypt*, 23 L.Q. REV. 409 (1907).

<sup>67</sup> Mackintosh, *supra* note 50, at 54.

<sup>68</sup> *Professor Henry Goudy*, 1 SCOTS LAW TIMES (NEWS) 113, 113 (1893).

<sup>69</sup> Letter from D.D. Field to Editor (Dec. 28, 1887) (*Notes on the Scottish Court of Session and its Procedure*), 37 ALB. L.J. 4 (1888); H.M. FIELD, THE LIFE OF DAVID DUDLEY FIELD, 300-305 (New York, Charles Scribner's Sons 1898). On Field's ambitions and work, see DAUN VAN EE, DAVID DUDLEY FIELD AND THE RECONSTRUCTION OF THE LAW (1986).

*Scotsman*, which regularly recorded the business of the Court of Session; but it is impossible to assess the extent and significance of his practice from this material. If development of a pattern is instructive, however, one can see that between 1872 and 1883, he is listed as counsel in eighteen reported cases, while between 1884 and 1892, he appears in forty-five.<sup>70</sup> He will, of course, have acted in many more.<sup>71</sup> A roll of Queen's Counsel was not created in Scotland until 1896; unless Dean of the Faculty of Advocates or a Law Officer, counsel in Scotland generally took precedence according to their year of call.<sup>72</sup> This said, although sometimes Goudy still was led by others, after 1881, he can be found leading junior advocates in twelve cases, as well as acting on his own. All this suggests a healthy and growing practice.

It is tempting to suppose that what shaped Goudy's career at the bar was his involvement in the criminal trial and civil litigation arising out of the catastrophic failure of the City of Glasgow Bank in 1878. This famous event brought disaster on many.<sup>73</sup> The bank was a joint stock company with unlimited liability, and its collapse exposed shareholders to ruin, raising in particular the question of the liability of those who held shares as trustees.<sup>74</sup> Over twelve days the manager and directors were tried for fraud before the High Court of Justiciary in Edinburgh; Goudy acted as junior to Alexander Asher in the defence of Robert Salmond, one of the seven men indicted.<sup>75</sup>

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<sup>70</sup> The calculations are based on a search through Westlaw.

<sup>71</sup> See below. In 1891 he appeared in at least 9 cases; only five were formally reported.

<sup>72</sup> J.W. Cairns, *History of the Faculty of Advocates to 1900*, in 13 THE LAWS OF SCOTLAND: STAIR MEMORIAL ENCYCLOPÆDIA, 499, 522-24 (§ 1239 §§ 1272-74) (Sir Thomas Smith et al. eds. 1996).

<sup>73</sup> S.G. CHECKLAND, SCOTTISH BANKING: A HISTORY, 1695-1973, 469-478 (1975); Leo Rosenblum, *The Failure of the City of Glasgow Bank*, 8 ACCOUNTING REV. 285 (1933).

<sup>74</sup> See K.G.C. Reid, *Embalmed in Rettie: The City of Glasgow Bank and the Liability of Trustees*, in JUDGE AND JURIST: ESSAYS IN MEMORY OF LORD RODGER OF EARLSFERRY, 489 (Andrew Burrows, David Johnston, and Reinhard Zimmermann eds. 2013); R.S. Shiels, *Civil Litigation and the Collapse of the City of Glasgow Bank*, JURID. REV. 155 (2012).

<sup>75</sup> *H.M.A. v. Stewart et al.* (1879) 6 R. (J.) 19; *Trial of the Manager and Directors of the City of Glasgow Bank*, THE SCOTSMAN, Jan. 21, 1879, at 2; R.S. Shiels, *The Criminal Trial of the Directors of the City of Glasgow Bank*, JURID. REV. 27 (2013).

Probably also shaping Goudy's career were his Ayrshire links. Thus Salmond had an Ayrshire home at Rankinston, and his local lawyer, William Pollock, was a writer in Ayr.<sup>76</sup> Pollock lived three houses away from Goudy's mother in Ayr, at 6 and 9 Alloway Place respectively, and must have known him.<sup>77</sup> Goudy had earlier acted with Asher in a case from Ayrshire about delivery of a horse;<sup>78</sup> he can later be traced as counsel for Dundonald Parochial Board.<sup>79</sup>

A month after the conclusion of the criminal trial, Goudy was counsel, junioring to John McLaren, before the First Division of the Inner House of the Court of Session in *Tochetti v. The City of Glasgow Bank and Liquidators*; their aim was to get Charles Tochetti removed from the Register of Shareholders as a trustee and executor under a will.<sup>80</sup> The report in *The Scotsman* shows that Goudy presented the argument in the debate on the first day of the hearing before the First Division.<sup>81</sup>

Of the fifty-six reported cases in which he is involved after *Tochetti*, seventeen concern bankruptcy, and six trusts. He may have been developing an acknowledged expertise in the former. He will have been involved in far more, some of which can be traced in *The Scotsman*.<sup>82</sup> In the early 1880s he lectured on bankruptcy to the Institute of Bankers of Scotland.<sup>83</sup> In 1886, he published *A Treatise on the Law of Bankruptcy in Scotland*.<sup>84</sup> By modern standards a heroically sized work, it had over 600 pages of

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<sup>76</sup> *Trial of the Manager and Directors of the City of Glasgow Bank, Twelfth Day's Proceedings*, THE SCOTSMAN, Feb. 3, 1879, at 3.

<sup>77</sup> POST OFFICE GENERAL TRADES DIRECTORY FOR AYR, NEWTON & WALLACETOWN, 1878-79, 40, 57 (Ayr, printed at Ayr Advertiser Office 1878).

<sup>78</sup> *Brown v. McConnell* (1876) 3 R. 788.

<sup>79</sup> *A Parochial Case*, THE SCOTSMAN, Nov. 15, 1886, at 7.

<sup>80</sup> *Tochetti v. The City of Glasgow Bank and Liquidators* (1879) 6 R. 789. On the issue, see Reid, *supra* note 74, at 497-506.

<sup>81</sup> *Court of Session. First Division*, THE SCOTSMAN, Feb. 28, 1879, at 2; McLaren responded to the argument of the liquidators: *Court of Session. First Division*, THE SCOTSMAN, Mar. 3, 1879, at 3.

<sup>82</sup> See, e.g., *Edinburgh Bankruptcy Court*, THE SCOTSMAN, Dec. 22, 1882, at 3; *Commercial Bank of Scotland v. Macgregor*, THE SCOTSMAN, June 25, 1888, at 9.

<sup>83</sup> *Institute of Bankers in Scotland*, THE SCOTSMAN, Mar. 2, 1883, at 4; *The Institute and its Work*, THE SCOTSMAN, Nov. 25, 1922, at 13.

<sup>84</sup> HENRY GOUDY, *A TREATISE ON THE LAW OF BANKRUPTCY IN SCOTLAND, WITH AN APPENDIX CONTAINING STATUTES, ACTS OF SEDERUNT AND FORMS* (Edinburgh, T. & T. Clark 1886).

text, and over 200 pages of appendix of statutes, acts of sederunt and styles, with additional lists of cases and a complex index. The aim was to provide an effective, practical guide to the law. It was well received, the reviewer in *The Scotsman* noting that it was “a branch of law ... closely connected ... with the welfare of a great commercial nation like our own.”<sup>85</sup> With the assistance of two advocates, Andrew Mitchell and William J. Cullen, Goudy prepared an even longer second edition, published in 1895. According to the preface, the new edition was necessitated by the development of the case law.<sup>86</sup> Cullen prepared the third edition of 1903, while Sheriff T.A. Fyfe of Glasgow the fourth (and last) of 1914. Judging by the prefaces, Goudy appears to have worked on neither.<sup>87</sup> The book can be found cited in court as soon as it was published.<sup>88</sup> It is still treated as authoritative and regularly relied on, as recently as December 2013 in the Court of Session, and before the Supreme Court in 2013 in a case arising out of the collapse of the Icelandic banking system.<sup>89</sup>

Of course, Goudy had other strings to his bow. In 1880, with a fellow advocate and friend, William C. Smith, he published *Local Government*.<sup>90</sup> A reviewer described it as providing “a clear and accurate account of the different bodies by which the local government of Scotland is carried on.” The complexity of local government in Victorian Scotland – with various boards and trustees all with varying functions, and all elected or appointed in various ways – may well have made a

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<sup>85</sup> *Literature*, THE SCOTSMAN, Mar. 15, 1886, at 6; Book Review, 30 J. JURISPRUDENCE, 150 (1886) (reviewing TREATISE ON THE LAW OF BANKRUPTCY, *supra* note 84).

<sup>86</sup> HENRY GOUDY, ASSISTED BY ANDREW MITCHELL AND W.J. CULLEN, A TREATISE ON THE LAW OF BANKRUPTCY IN SCOTLAND, [v] (2<sup>nd</sup> ed., Edinburgh, T. & T. Clark 1895).

<sup>87</sup> HENRY GOUDY, A TREATISE ON THE LAW OF BANKRUPTCY IN SCOTLAND (3<sup>rd</sup> ed. by W.J. Cullen, 1903); HENRY GOUDY, A TREATISE ON THE LAW OF BANKRUPTCY IN SCOTLAND (4<sup>th</sup> ed. by T.A. Fyfe, 1914).

<sup>88</sup> *James Millar's Trs. v. James Millar and Son's Tr.* (1886) 13 R 543 at 548 n. 2 (decided Feb. 5, 1886).

<sup>89</sup> *Heritable Bank plc v. Landsbanki Islands HF* 2013 SC (UKSC) 201 at 203, 212; *The Joint Liquidators of the Scottish Coal Company Ltd v. The Scottish Environment Protection Agency and Others* 2014 SC 372, 375, 376, 385, 388, 399-400 (decided Dec. 12, 2013 (Inner House)).

<sup>90</sup> [HENRY GOUDY AND W.C. SMITH], LOCAL GOVERNMENT (Edinburgh, W. Blackwood & Sons 1880).

straightforward account such as this very welcome.<sup>91</sup> A civic-minded man, Goudy had practical experience of such complexity, sitting as an elector in the Edinburgh School Board choosing teachers in 1876, also considering whether religious education should be compulsory.<sup>92</sup> He also acted in litigation involving local authorities, and later contributed the entry on “Borough” to *Chambers’s Encyclopædia*.<sup>93</sup>

### C. Academic Ambitions

Goudy’s *Treatise on Bankruptcy* was the product of great labour. It was no doubt intended to boost his profile and hence his career at the bar. It also served as an advertisement of his fitness for a university post, as scholarly production was slowly but progressively becoming seen as significant in British academic life. In the year it was published, at the annual meeting of the Edinburgh Ayrshire Club, he proposed the toast “The Universities and other Educational Institutions of Scotland.”<sup>94</sup> After graduation and admission to the bar, Goudy had maintained his interest in the Faculty of Law in Edinburgh. As a student, he had been active in the Scots Law Society;<sup>95</sup> he continued this interest as an advocate. In 1881, at “the sixty-seventh session of the Scots Law Society in connection with the University of Edinburgh,” he moved the vote of thanks to the speaker, Aeneas J. G. Mackay (1839-1911). Mackay, then Professor of Constitutional Law and History, had talked of the history of Scots law

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<sup>91</sup> Book Review, 25 J. JURISPRUDENCE 100, 100 (1881) (reviewing LOCAL GOVERNMENT, *supra* note 90).

<sup>92</sup> *Edinburgh School Board Election*, THE SCOTSMAN, Apr. 3, 1876, at 3. It may be in connection with this that he borrows JAMES GRANT, HISTORY OF THE BURGH AND PARISH SCHOOLS OF SCOTLAND (1876) from the Advocates Library: National Library of Scotland [NLS], Advocates Receipt Books, Faculty Record [FR] 278 at 196 (Apr. 2, 1877). He borrows the work again in 1885: FR 279 at 276 (Feb. 9, 1885).

<sup>93</sup> *Glasgow City and District Railway Co. v. Lord Provost, Town Council, and Magistrates of Glasgow* (1884) 11 R. 1110; *Somerville v. McGregor* (1889) 17 R. 46; Henry Goudy, *Borough*, in 2 CHAMBERS’S ENCYCLOPÆDIA: A DICTIONARY OF UNIVERSAL KNOWLEDGE, 335 (new ed. 1901).

<sup>94</sup> *Edinburgh Ayrshire Club*, THE SCOTSMAN, Mar. 13, 1886, at 9.

<sup>95</sup> *Scots Law Society*, THE SCOTSMAN, Mar. 27, 1871, at 2: Goudy offers toast, “The College of Justice,” at the annual dinner in the Café Royal.

and possible codification.<sup>96</sup> Goudy continued to attend the Scots Law Society after appointment to the Chair of Civil Law.<sup>97</sup> He even came north from Oxford to address the Society in 1895.<sup>98</sup> He also supported the University's Dialectic Society.<sup>99</sup> As well as continuing involvement with student societies, he attended the lectures given by John F. McLennan on the Law Fellowship of the Edinburgh University Endowment Association in 1881 and 1882.<sup>100</sup> Most significantly, it is worth noting that in 1881 he served as an Examiner for the degree of LL.B.<sup>101</sup>

Goudy also had wider scholarly connections; as well as those with Germany deriving from his student days, we have noted he knew David Dudley Field through whom he secured a paper on procedure in New York for the *Scottish Journal of Jurisprudence*, Goudy himself having written one on Scottish procedure before the Court of Session for the *Albany Law Journal* on Field's request.<sup>102</sup> He later wrote Field's obituary for the *Juridical Review*.<sup>103</sup>

Similar scholarly concerns and academic ambitions may have prompted Goudy to accept the position of first editor of *The Juridical Review*, started in 1889 by the Edinburgh law publisher, W. Green. The recent appearance of the *Law Quarterly Review* in England may have suggested there was room for another modern legal periodical with a scholarly focus. This was the era of the emergence of something like

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<sup>96</sup> *Scots Law Society*, THE SCOTSMAN, Nov. 8, 1881, at 4; A.H. Millar, rev. by Nathan Wells, *Mackay, Aeneas James George (1839–1911)*, in OXFORD DICTIONARY OF NATIONAL BIOGRAPHY, <http://www.oxforddnb.com/view/article/34738> (last visited May 28, 2015) (subscription required).

<sup>97</sup> *Scots Law Society*, THE SCOTSMAN, Nov. 8, 1892, at 4.

<sup>98</sup> *Classified Advertisement, University of Edinburgh: Scots Law Society*, THE SCOTSMAN, Nov. 4, 1895, at 1.

<sup>99</sup> *Edinburgh University Dialectic Society*, THE SCOTSMAN, Mar. 19, 1878, at 6.

<sup>100</sup> *Edinburgh University-Law Fellowship*, THE SCOTSMAN, May 25, 1881, at 6; *Law Fellowship of the Edinburgh University Endowment Association*, THE SCOTSMAN, Nov. 17, 1882, at 4.

<sup>101</sup> ALPHABETICAL LIST OF GRADUATES, *supra* note 47, at 112.

<sup>102</sup> L.H. Andrews, *Civil Procedure in the Courts of New York*, 32 J. JURISPRUDENCE 263 (1888); H[enry] G[oudy], *Notes on the Scottish Court of Session and its Procedure*, 37 ALB. L.J. 4 (1888).

<sup>103</sup> Henry Goudy, *David Dudley Field*, 6 JURID. REV. 264 (1894).

modern law journals.<sup>104</sup> The *Juridical Review* appeared quarterly, edited by Goudy until he left for Oxford at the end of 1893.<sup>105</sup> In a “Prefatory Note,” Goudy, under the guise of “The Editors,” set out a programme for the journal, a programme that reflected his own values. It was intended to devote special attention to Scots law, and to provide a critical record of Scottish and English court decisions. He added:

The Law of Scotland owes a large debt to the jurisprudence of other countries, especially to the Roman and the English Law, and to the works of the Jurists of France, Holland, Germany, and America. Scotland may, perhaps, repay a small part of that debt by showing, by means of practical examples, how principles derived from foreign as well as native sources have been combined in a good working system by her own eminent judges and legal writers.

The aim was to treat “both law and politics from a cosmopolitan rather than from a merely local standpoint.” Writers were sought from “all parts of the United Kingdom, India, and the Colonies,” and also from “the Continent and America.” The aim was “to make it International as well as national,” since there was “no Review which covers the field of Political Science as well as that of Jurisprudence and International Law and Private Law.” Administrative law was to be of particular interest.<sup>106</sup> It is worth noting that, in the first issue, Goudy had secured an article from Field on codification.<sup>107</sup>

#### *D. The Chair of Civil Law in Edinburgh*

Given all these endeavours, it is no surprise to find that Goudy became a candidate for appointment to chairs in the University. At this time, the University’s Curators of Patronage made appointments to the Chairs of Civil Law and Scots Law

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<sup>104</sup> Reinhard Zimmermann, *Law Journals in Nineteenth-Century Scotland*, 12 EDINBURGH L. REV. 9, 21-23 (2008).

<sup>105</sup> See F.P. Walton, “*The Juridical Review*” and *Comparative Law*, 50 JURID. REV. 8, 9 (1938).

<sup>106</sup> The Editors, *Prefatory Note*, 1 JURID. REV. 1, 1-2 (1889).

<sup>107</sup> D.D. Field, *Codification in the United States*, 1 JURID. REV. 18 (1889).

on the basis of a “leet” of two names sent to them from the Faculty of Advocates, who, from 1722, had had, by statute, the right and responsibility of providing two names in this way. On notification of a vacancy, the Faculty would hold an internal election to determine who had most support and who had the second highest level of support, and their names would then go on the leet in sequence, the one with most support first. Thus, when it was necessary to fill the chair of Scots Law in 1888, Goudy was a candidate, coming second to John (later Sir John) Rankine, in the voting in the Faculty.<sup>108</sup> He was thus put second on the leet, and the Curators of Patronage appointed Rankine, a distinguished scholar, who had published his classic work, *Law of Landownership in Scotland*, in 1879.<sup>109</sup> The next vacancy in the University’s Faculty of Law came sooner than anticipated with the sudden death of James Muirhead in 1889. Goudy was one of six candidates before the Faculty of Advocates, but came first in the voting and was put on the leet with N.J.D Kennedy second. The Curators of Patronage duly appointed him on December 13, 1889.<sup>110</sup> The Senatus Academicus admitted him as Professor of Civil Law on January 25, 1890.<sup>111</sup>

It is almost a matter of convention to explain that a practising lawyer took up an academic post because of lack of success in practice; evidence is not usually required or provided for such an assertion. In an affectionate and enthusiastic appreciation of Goudy, one of his pupils accordingly said that his “practice as an advocate was never large,” though he did not doubt that Goudy “had the industry which would have made him a successful pleader.”<sup>112</sup> F.H. Lawson, who probably

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<sup>108</sup> *The Scots Law Professorship*, THE SCOTSMAN, Jan. 14, 1888, at 6.

<sup>109</sup> J.W. Cairns, *Rankine, Sir John (1846–1922)*, in OXFORD DICTIONARY OF NAT’L BIOGRAPHY, <http://www.oxforddnb.com/view/article/50980> (last visited May 28, 2014) (subscription required).

<sup>110</sup> *Appointment to the Edinburgh University Civil Law Chair*, THE SCOTSMAN, Dec. 14, 1889, at 6.

<sup>111</sup> Edinburgh University Archives [hereafter EUA], IN1/GOV/SEN/1, Minutes of the Senatus, vol. 9, pp. 350-51 (Jan. 25, 1890).

<sup>112</sup> J.F. Whyte, *Henry Goudy: An Appreciation*, 33 JURID. REV. 161, 163 (1921).



had never known Goudy, described him as having “hardly practised.”<sup>113</sup> It is worth recalling, however, that Goudy had been supporting himself at the bar for fifteen years before he became Professor of Civil Law. Another of Goudy’s students commented: “Professor Goudy’s is a familiar figure at the Parliament House, where he has a lucrative practice.”<sup>114</sup> In 1887, David Dudley Field commented on his prominence at the bar.<sup>115</sup> Like many men of his age (entering his forties), he may have felt it was time for a change of job, particularly to one with a guaranteed income. Successful practice as an advocate is physically demanding, and Goudy had continuing health problems. Less academically oriented advocates might have sought appointment as a sheriff substitute; Goudy’s ambition was now a university chair. The income from a chair was then significant. We know that in Muirhead’s final year in the chair of Civil Law, the income was slightly over £500 – £250 from salary, and roughly £250 from student fees, paid directly to the Professor.<sup>116</sup> Goudy could expect much the same. He could still continue his practice, but not be dependent on it. For a bachelor, this was a good prospect for a comfortable life with a decent income. Indeed, marking this was his move in the New Town of Edinburgh from a flat at 9 Dundas Street to a large, handsome town house at 2 Drummond Place.<sup>117</sup>

Goudy delivered an inaugural lecture before his class on May 13, 1890. In attendance were the Principal, who introduced him, various members of the Senatus, and representatives of the Faculty of Advocates. He first paid a warm tribute to his predecessor, Muirhead, noting his scholarly contributions, commenting that

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<sup>113</sup> F.H. LAWSON, *THE OXFORD LAW SCHOOL, 1850-1965*, 82 (1968).

<sup>114</sup> *Henry Goudy*, *supra* note 49, at 82.

<sup>115</sup> Letter from D.D. Field to Editor (Dec. 28, 1887), *supra* note 69.

<sup>116</sup> EUA, IN1/GOV/SEN/1, Minutes of the Senatus, vol. 9, pp. 362 (Feb. 22, 1890), 372-73 (Mar. 29, 1890).

<sup>117</sup> POST OFFICE, EDINBURGH AND LEITH DIRECTORY 1889-90, 110 (Edinburgh, General Post-Office 1889) (9 Dundas Street); POST OFFICE, EDINBURGH AND LEITH DIRECTORY 1890-91, 112 (Edinburgh, General Post-Office 1890) (2 Drummond Place).

Muirhead's treatises "exhibited profound scholarship, and must have required the most arduous labour in their preparation." He noted that before his death Muirhead had been working on an edition of Justinian's Institutes. His inaugural lecture was then devoted to exploring: why Roman law should be studied; how it should be studied; and the provision for its teaching in Scotland. He thought it should be studied as the foundation of the modern legal systems, which could not be properly understood without knowledge of it. He thought it should be taught both historically and doctrinally. Finally, he regretted the poor provision for its teaching in Scotland. He concluded by observing that it was more important than ever that the student of law should be well equipped for the practice of his profession, and that "the greatest safeguard against the danger of having their Scottish law overwhelmed by English decisions was to study the principles of jurisprudence which were to be found in the Roman law."<sup>118</sup>

Study of the *University Calendar* shows that Goudy followed this proposed method of conducting his class; in doing so, however, he was simply following the syllabus developed by his predecessor.<sup>119</sup> The lectures covered "the External and Internal History, and the General and Special Doctrines of the Law of Rome as developed in the Institutes of Gaius and Justinian, supplemented from the other ante-Justinian and Justinian texts."<sup>120</sup> Students being examined for the degree of LL.B. had also to study a specific title or specific titles of the Digest, on which there were questions involving translation and commentary.<sup>121</sup> The fee for the class was five

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<sup>118</sup> *Edinburgh University Civil Law Class*, THE SCOTSMAN, May 14, 1890, at 7.

<sup>119</sup> Compare, e.g., UNIVERSITY OF EDINBURGH, THE EDINBURGH UNIVERSITY CALENDAR 1889-90, 260-61 (Edinburgh, James Thin for the University of Edinburgh 1889), with UNIVERSITY OF EDINBURGH, THE EDINBURGH UNIVERSITY CALENDAR 1890-91, 288-89 (Edinburgh, James Thin for the University of Edinburgh 1890). On Muirhead's teaching, see Cairns, *supra* note 60, at 9-20.

<sup>120</sup> See, e.g. UNIVERSITY OF EDINBURGH, THE EDINBURGH UNIVERSITY CALENDAR 1891-92, 288-89 (Edinburgh, James Thin for the University of Edinburgh 1891).

<sup>121</sup> *Id.* at 308-309.

guineas; students taking it for a second year paid three guineas.<sup>122</sup> The class lasted over both winter and summer sessions, amounting to 130 lectures. His assistant, James Mackintosh, stated:

The instruction given was of a thorough and practical type, supplying a sound foundation for the study of jurisprudence in general and of Scots law in particular; it embraced not only the pure doctrine of the Pandects, but some account of later developments and changes due to the discussions of the civilians and the influence of the Canon law.<sup>123</sup>

Mackintosh had initially been appointed as Assistant to the Chair of Civil Law under Muirhead.<sup>124</sup> There is no evidence as to how he and Goudy divided the duties. One assumes they got on well together, since Goudy sought to have Mackintosh's remuneration increased.<sup>125</sup> The proposed raise may have been prompted by Mackintosh's recent publication of his translation of D. 18.1 and 19.1 with commentary as the *The Roman Law of Sale*, a work which Goudy had suggested he undertake.<sup>126</sup> Mackintosh included the recently published Sale of Goods Bill as well as citing Scottish and English cases. A notable classical scholar, Mackintosh had also been assistant to the Professor of Greek in St Andrews and that of Humanity in Edinburgh before admission to the bar, as well as classical examiner in the former University.<sup>127</sup> He was well able to handle the linguistic and historical considerations

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<sup>122</sup> *Id.* at 287.

<sup>123</sup> Mackintosh, *supra* note 50, at 55.

<sup>124</sup> EDINBURGH UNIVERSITY CALENDAR, *supra* note 120, at 5; ALPHABETICAL LIST OF GRADUATES, *supra* note 47, at 97; *The Chair of Civil Law in Edinburgh University*, THE SCOTSMAN, Nov. 25, 1893, at 8; *Edinburgh University - Appointment of Professor of Civil Law*, THE SCOTSMAN, Nov. 29, 1893, at 10.

<sup>125</sup> EUA IN1/GOV/CRT, Minutes of the Court of the University of Edinburgh, vol. V, 82-83.

<sup>126</sup> JAMES MACKINTOSH, THE ROMAN LAW OF SALE. WITH MODERN ILLUSTRATIONS. D. XVIII.1 AND XIX.1 TRANSLATED, WITH NOTES AND REFERENCES TO CASES AND THE SALE OF GOODS BILL, vii (Edinburgh, T. & T. Clark 1892).

<sup>127</sup> *Edinburgh University - Appointment of Professor of Civil Law*, THE SCOTSMAN, Nov. 29, 1893, at 10.

involved in the translation and commentary, which involved citation of contemporary literature both analytical and historical on Roman law.

Goudy, of course, continued his practice at the bar. To take 1891, for example, if one combines notices in *The Scotsman* with the formal court reports, one can find he appeared in: *Cleland v. Allan* (Second Division);<sup>128</sup> *Wood v. Elliott* (Second Division);<sup>129</sup> *Flinsch v. Gibson* (Second Division);<sup>130</sup> *National Heritable Property Association, Petr.* (Second Division);<sup>131</sup> *Maxwell's Trs.* (Outer House);<sup>132</sup> *Melville Smith's Executor v. Melville Smith's Heirs in Mobilibus*;<sup>133</sup> (with his colleague John Rankine) *Nicholson's Trs v. McLaughlin* (First Division);<sup>134</sup> *Wilson Petr*;<sup>135</sup> and as counsel for the liquidators of the Monkland Iron Co..<sup>136</sup> That only five of these nine cases are to be found in the formal reports confirms (as one would expect) that his business was much greater than study of Rettie's volumes might suggest.

Mackintosh claimed that Goudy's labours in writing his lectures meant that "the Professor found it necessary, during the first year or two, to concentrate practically his whole energies on his University work, although in theory his appointment was a part-time one."<sup>137</sup> We have seen, however, that he remained active at the bar. He also was active in University business. He regularly attended meetings of the Faculty of Law, and is recorded as missing only one. That they were usually held in the Advocates Library made attendance easy. In Goudy's time on the Faculty, only one meeting is recorded as held in Old College.<sup>138</sup> He also took on other duties,

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<sup>128</sup> (1891) 18 R. 377.

<sup>129</sup> (1891) 18 R. 382.

<sup>130</sup> *Court of Session*, THE SCOTSMAN, Jan. 29, 1891, at 8.

<sup>131</sup> *Second Division*, THE SCOTSMAN, Jan. 30, 1891, at 3.

<sup>132</sup> *Court of Session*, THE SCOTSMAN, Mar. 31, 1891, at 3.

<sup>133</sup> (1891) 18 R. 1036.

<sup>134</sup> *Court of Session*, THE SCOTSMAN, Nov. 5, 1891, at 7; (1891) 19 R. 49.

<sup>135</sup> (1891) 19 R. 219.

<sup>136</sup> *Outer House*, THE SCOTSMAN, June 3, 1891, at 10.

<sup>137</sup> Mackintosh, *supra* note 50, at 55.

<sup>138</sup> EUA IN1/ACA/LAW, Minute Book Law Faculty 1882-1901 (unpaginated).

becoming convenor of the Board of Studies in History and Law in 1892.<sup>139</sup> Had he held the chair for longer, he would have had the opportunity to make more of a mark on the university more generally.

Mackintosh commented of Goudy: “It was no easy task to take up the mantle of Muirhead, an original worker in this field, one of the first British teachers to give due prominence to the historical development of the Roman Law, and withal a singularly attractive lecturer.” He was nonetheless described as maintaining the “high standard” of his predecessor’s teaching, convincing his students that “their year of Roman Law was one of the most interesting and educative parts of their legal curriculum.”<sup>140</sup> This is all the more creditable when one considers that there is no evidence that Goudy had maintained an interest in Roman law through his years of practice. It was not until November 1889 that he first borrowed a book on Roman law from the Advocates Library, marking the start of his preparation for teaching; the law books he had previously borrowed were mostly concerned with commercial law, particularly bankruptcy, with a few on marriage and international law, in which we know he was also interested.<sup>141</sup>

Lord Alness was later to describe Goudy as lecturing “with a glass of cold water on his desk to wash down the aridities of the civil law of Rome;” but this seems to mark the judge’s attitude to Roman law more than his view of Goudy’s teaching, though it hints at Goudy’s austere air.<sup>142</sup> Another pupil described him as acquitting “himself with a distinction which rivalled that of his eminent predecessor.” He also praised Goudy’s “manner as a lecturer” and his “methodical and businesslike division of his course.” He was considered to be at his best when, “interrupting the reading of

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<sup>139</sup> EUA IN1/ACA/LAW, Board of Studies History and Law 1892- (unpaginated).

<sup>140</sup> Mackintosh, *supra* note 50, at 55.

<sup>141</sup> NLS, Receipt Book, *supra* note 92, Law Room, 1882-1890, FR 286 (unpaginated).

<sup>142</sup> *Lord Alness Honoured. Complimentary Dinner in Edinburgh. Praise for Mr Lloyd George*, THE SCOTSMAN, Jan. 31, 1934, at 13.

his lecture, he stopped to describe some ancient Roman ceremony.” He took his class to hear lectures on Roman architecture, suggesting a wider vision of education in Roman law. He was also described as “a born teacher.”<sup>143</sup> A student attending his class in 1890 remarked that his “lectures are models of lucidity and good arrangement,” but added that it was “the subtle touch of the scholar, the refinement of a cultured mind, that impress[ed] one most in Professor Goudy’s lectures.” It was also noted that “intimate acquaintance with German jurisprudence and its exponents” was “manifest in his lectures.”<sup>144</sup> His students marked their esteem for him by presenting him with a salver on his departure from the Edinburgh chair.<sup>145</sup>

#### *E. Politics and the Regius Chair of Civil Law at Oxford*

Politics were important in gaining patronage and preferment at the nineteenth-century Scots bar, and Goudy was a Liberal who had held a minor legal appointment as a part-time prosecutor under Gladstone’s government in the 1880s.<sup>146</sup> This affiliation may well have reflected his Ulster Presbyterian heritage, though the Liberal Party was generally strong in Scotland.<sup>147</sup> In 1885, however, William Gladstone had adopted a policy of Home Rule for Ireland, because the election of that year left Charles Stewart Parnell’s Irish Nationalists holding the balance of power in the House of Commons.<sup>148</sup> This eventually led to a split in the Liberal Party, with the creation of the Liberal Unionist Association in 1886. The Liberal Unionists were particularly

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<sup>143</sup> Whyte, *supra* note 112, at 161-63.

<sup>144</sup> Henry Goudy, *supra* note 49, at 81-82.

<sup>145</sup> Whyte, *supra* note 112, at 163.

<sup>146</sup> Professor Henry Goudy, *supra* note 68, at 113; *Appointments*, 30 J. JURISPRUDENCE 214 (1886); *Glasgow Circuit Court*, THE SCOTSMAN, Apr. 21, 1886, at 6. For another example of his work as a prosecutor briefed by a procurator fiscal, see *Important Trawling Prosecution at Cupar-Fife*, THE SCOTSMAN, Feb. 18, 1884, at 6.

<sup>147</sup> On his father’s radical and liberal politics, see J.L. Nelson, “Violently Democratic and Anti-Conservative”? : An Analysis of Presbyterian “Radicalism” in Ulster, c. 1800-1852, 68-72, 82, 97-99, 100, 131-37, 238, 253-54, 307, 323, 344-47 (2005) (Ph.D. dissertation, University of Durham), (available at Durham E-Theses Online: <http://durham/etheses.dur.ac.uk/1795/>) (last visited July 1, 2014).

<sup>148</sup> P.T. MARSH, JOSEPH CHAMBERLAIN: ENTREPRENEUR IN POLITICS, 214-54 (1994).

strong in Scotland.<sup>149</sup> Goudy publicly supported the new Association. He was a prominent presence at meetings in Edinburgh of the Liberal Unionists, such as the address in the Music Hall in June 1886 by the brilliant George Goschen, then M.P. for East Edinburgh, when the speaker attacked Gladstone and the Land Purchase Bill, or the address given by Lord Selborne in December 1887.<sup>150</sup> When the Liberal Unionists started to organise in Edinburgh, though Goudy publicly sent his apologies to the relevant meeting, he promised his assistance.<sup>151</sup>

Despite this flirtation with Liberal Unionism, in the long run Goudy remained a Liberal; he did not join those Scots – and there were many – on their journey towards Conservatism and Unionism.<sup>152</sup> A (self-described) “lifelong Liberal and Ulsterman,” Goudy never revised his views on Home Rule, however, and when its spectre reared its head again in the Home Rule Bill of 1912, he made his views clear.<sup>153</sup> In 1914 he became a prominent public supporter of the British Covenant, opposing the third Home Rule Bill for Ireland.<sup>154</sup> His endorsement appeared in a notice inserted on the front page of *The Scotsman*, along with that of his friend and colleague A.V. Dicey (1835-1922), Vinerian Professor of English Law and noted constitutional theorist, as well as those of such prominent figures as Rudyard Kipling, Lord Milner, and Field Marshall Lord Roberts. The advertisement was designed to encourage others to sign. Echoing the Ulster Covenant of 1912, the British Covenant stated that the Home Rule Bill was unconstitutional, and declared that the signatories considered themselves justified in “taking or supporting any action that may be

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<sup>149</sup> IAN CAWOOD, *THE LIBERAL UNIONIST PARTY: A HISTORY*, 32, 138-44 (2012).

<sup>150</sup> *Election News, East Edinburgh: Mr Goschen in the Music Hall*, *THE SCOTSMAN*, June 30, 1886, at 6; *Lord Selborne on the Irish Question*, *THE SCOTSMAN*, Dec. 14, 1887, at 7.

<sup>151</sup> *The Liberal Unionists*, *THE SCOTSMAN*, June 11, 1887, at 8.

<sup>152</sup> I have so far been unable to trace him in the records of the Liberal Unionists in Edinburgh: see, e.g., NLS, Acc. 10424/17 (Minute Book of the East and North of Scotland Liberal Unionist Association).

<sup>153</sup> Letter from Henry Goudy to the Editor, *THE TIMES*, Oct. 29, 1912, at 7. This letter engendered correspondence over the next few days. In *Obituary: The Late Professor Goudy*, *supra* note 5, at 274 it was suggested that he had signed the Ulster Covenant of 1912. This seems mistaken.

<sup>154</sup> *Home Rule and Coercion*, *THE TIMES*, Mar. 3, 1914, at 7.

effective to prevent it being put into operation, and more particularly to prevent the armed forces of the Crown being used to deprive the people of Ulster of their rights as citizens of the United Kingdom.”<sup>155</sup> Goudy’s colleague T.E. Holland was also a signatory.<sup>156</sup> In May Goudy sat on the platform of a meeting in Oxford addressed by Lord Milner organised by the British Covenant Committee and the Conservative and Unionist Association of Oxford.<sup>157</sup>

The extent to which Goudy’s politics affected his appointment in Edinburgh is unclear. But his Liberalism almost certainly influenced his translation to the Regius Chair of Civil Law in Oxford. His immediate predecessor was his fellow-Ulsterman, James Bryce, initially educated in Scotland before studying at Oxford. It was Bryce who secured the Regius Chair for Goudy through his advice to Gladstone, whose duty it was to advise the Queen on the appointment.

Bryce had held the chair, which was then treated as part-time and not necessarily associated with fellowship of a college, from 1870, while also, from 1880, serving as a Liberal M.P. In 1893, he entered the cabinet under Gladstone as Chancellor of the Duchy of Lancaster. This led to his resignation from the chair.<sup>158</sup> The choice for his successor finally came down to three candidates (Bryce having successfully earlier dismissed from the running Thomas Raleigh of Balliol and Erwin Grueber, Reader in Roman Law):<sup>159</sup> A.T. Carter of Christ Church; J.B. Moyle of New College; and Goudy. In a letter of June 1893 to Gladstone, Bryce emphasised that

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<sup>155</sup> *British Covenant*, THE SCOTSMAN, Mar. 12, 1914, at 1. For a nuanced understanding of the British Covenant, see D. Thackeray, *Rethinking the Edwardian Crisis of Conservatism*, 54 HISTORICAL J. 191, 203-6 (2011). On Dicey, see R.A. Cosgrove, *Dicey, Albert Venn (1835–1922)*, in OXFORD DICTIONARY NAT’L BIOGRAPHY, <http://www.oxforddnb.com/view/article/32811> (last visited May, 28, 2015) (subscription required).

<sup>156</sup> THE TIMES, Mar. 6, 1914, at 8.

<sup>157</sup> *The Nation as Arbiter. Lord Milner on the Irish Muddle. Speech to Oxford Covenanters*, THE TIMES, May 23, 1914, at 10.

<sup>158</sup> Harvie, *supra* note 20.

<sup>159</sup> Letter from W.E. Gladstone to James Bryce (June 16, 1893), in LAWSON, *supra* note 113, 219 (1968).



Goudy was “decidedly above” Moyle, had studied Roman law in Germany, and had the “experience of teaching it to large classes in Edinburgh,” while also having been “a counsel in good practice, who has learnt to handle the civil law as a working modern system.” Carter he dismissed as “altogether of too light metal, a clever man, but superficial.”<sup>160</sup> Lawson’s account of Carter supports Bryce’s view.<sup>161</sup> Finally, Bryce informed Gladstone that: “The objection he is not an Oxford man is (it seems to me) diminished or removed by the fact that he is prof[essor] of the subj[ect] in the country where R[oman] L[aw] is the basis of the actual present law and thus the chosen repres[entati]ve of the subject in that part of Brit[ain] where it is most studied.”<sup>162</sup>

To the modern mind, Moyle’s publication of an edition of Justinian’s *Institutes* and his work on the *Contract of Sale in the Civil Law* might at first sight seem to have made him better qualified for appointment than Goudy, who had published nothing on Roman law.<sup>163</sup> At the time, many in Oxford thought Moyle should have got the chair rather than the Ulsterman, and were of the view that he would have, had it been an Oxford rather than a royal appointment.<sup>164</sup> His obituary in the *Oxford Magazine* in 1930 stated that “Moyle was the better man, and rendered greater service to the study of Roman Law in this country,” so that it was “a question whether” his published work “with all its merits, represents the full extent of what he might have given us had the fates been kinder;” indeed, it added that it was “probable that given the opportunity he would have done much more.”<sup>165</sup> On the other hand,

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<sup>160</sup> Letter from James Bryce to W.E. Gladstone (June, 1893), in LAWSON, *supra* note 113, at 219-20.

<sup>161</sup> LAWSON, *supra* note 113, at 105-6.

<sup>162</sup> T.B. Smith, *Authors and Authority*, 12 J. SOC’Y OF PUB. TCHRS LAW N.S. 1, 3-4 (1972-73).

<sup>163</sup> J.B. MOYLE, *IMPERATORIS IUSTINIANI INSTITUTIONUM LIBRI QUATTUOR* (Oxford, Clarendon Press 1883); J.B. MOYLE, *THE CONTRACT OF SALE IN THE CIVIL LAW* (Oxford, Clarendon Press 1892).

<sup>164</sup> *Obituary, Mr. J.B. Moyle*, THE TIMES, Feb. 26, 1930, at 16; *Obituary: Dr. J.B. Moyle*, 48 OXFORD MAG., 613 (1930).

<sup>165</sup> *Obituary: Dr. J.B. Moyle*, *supra* note 158 at 614.

Bryce told Gladstone that Moyle's "books are creditable, but not remarkable;"<sup>166</sup> perhaps he was correct, as Francis de Zulueta (who succeeded Goudy) later waspishly remarked of Moyle's *Institutes*: "To one trained under Windscheid it would have been easy to write a more learned work."<sup>167</sup> The obituary in *The Times* was also cautious about Moyle's qualities, stating that his teaching, "like his book, was clear, accurate and robust," though the "larger aspects of Roman law did not strongly appeal to him, but he was an admirable teacher for the ordinary law student." It pointed out that he revised his edition of the *Institutes*, "but did not carry his Roman studies much further."<sup>168</sup> This sounds like code for scholarly mediocrity. Bryce advised Gladstone that Moyle "was not a strong man," and, though his appointment would be defensible on the basis of his scholarship, he had "not enough strength of personality to provide essential force to the Faculty as its head, or to secure for the study the place it deserves."<sup>169</sup>

In fact, of the three, Goudy may well have been the man most suited to what was needed. His training, his experience of teaching a large class, rather than simply of giving tutorials, and the undoubted intellectual range and ability signified by his *Treatise* all demonstrated his qualifications and balanced whatever qualifications Moyle may have seemed to possess. He was also a conscientious, good-natured, and hard-working man. Finally, Goudy was only in his mid-forties, so much might still be expected of him. And indeed much was to be given.

The Queen duly nominated Goudy as Regius Professor. His appointment was common knowledge from June 1893.<sup>170</sup> On November 6, he sent to the Court of Edinburgh University a formal letter of resignation to take effect from 1 January

<sup>166</sup> Letter from James Bryce to W.E. Gladstone (June, 1893), LAWSON, *supra* note 113, at 219-20.

<sup>167</sup> F[rancis de] Z[ulueta], *Note*, 46 L.Q. REV. 405 (1930).

<sup>168</sup> *Obituary, Mr. J.B. Moyle*, *supra* note 164 at 16.

<sup>169</sup> Letter from James Bryce to W.E. Gladstone (June, 1893), LAWSON, *supra* note 113, at 219-20.

<sup>170</sup> *Oxford Appointment for an Edinburgh Professor*, THE SCOTSMAN, June 27, 1893, at 4.

1894.<sup>171</sup> He moved south. In 1877, the University Commission had attached a Fellowship of All Souls College to the Regius Chair of Civil Law; Goudy was the first holder of the chair also to occupy this Fellowship. He decided to live in College.<sup>172</sup> He was also to acquire a home, named Strathmore, in the Malvern Hills; as his health deteriorated he sold it with regret in 1920, moving to Bath where he died.<sup>173</sup> His love of the Malvern Hills and civic concern was demonstrated by his participation in attempts to preserve them from uncontrolled quarrying.<sup>174</sup>

Goudy was awarded the Oxford degree of D.C.L. by decree on 24 January 1894.<sup>175</sup> Edinburgh followed with the award of the degree of LL.D. *honoris causa* on 13 April; his friend Kirkpatrick presented him for it.<sup>176</sup> By the end of May he had delivered at All Souls his *Inaugural Lecture on the Fate of Roman Law North and South of the Tweed* – a topic suggested by T.E. Holland.<sup>177</sup> After paying a further tribute to Muirhead as well as to his predecessor Bryce, he explored aspects of the differences between Scots and English law, arguing that, after the Reformation, the “Roman Law became *jus receptum* in Scotland to quite as great an extent as it did in Germany, Holland, and other Continental Countries.” The divergences between the laws of the two countries were due to the differing fates of Roman law in each.<sup>178</sup> Its content was simply summarized in the *Juridical Review*;<sup>179</sup> but the reviewer in the

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<sup>171</sup> EUA IN1/GOV/CRT, Minutes of the University Court of Edinburgh, Volume IV, p. 146 (Nov. 13, 1893).

<sup>172</sup> *Death of Prof[essor] Goudy. An Able Jurist*, THE TIMES, Mar. 14, 1921, at 15. This was probably written by De Zulueta.

<sup>173</sup> Letter from S.M. Penney to the Editor (Mar. 8, 1921), *The Late Professor Goudy*, THE SCOTSMAN, Mar. 14, 1921, at 9.

<sup>174</sup> Letter from Henry Goudy to the Editor (n. d.), *Injury to Malvern Hills*, THE TIMES, Oct. 25, 1907, at 10. Material relating to him survives in the records of the Malvern Hills Conservators: National Archives, GB 2049 PH.

<sup>175</sup> *University Intelligence. Oxford, Jan. 24*, THE TIMES, Jan. 25, 1894, at 11.

<sup>176</sup> *University of Edinburgh. Graduation Ceremonial*, THE SCOTSMAN Apr. 14, 1894, at 10.

<sup>177</sup> HENRY GOUDY, *INAUGURAL LECTURE ON THE FATE OF THE ROMAN LAW NORTH AND SOUTH OF THE TWEED*, 4 (London, Henry Frowde 1894).

<sup>178</sup> *Id.* at 3-4, 27, 33.

<sup>179</sup> J.M.I., Book Review, 6 JURID. REV. 270 (1894) (reviewing *FATE OF THE ROMAN LAW NORTH AND SOUTH OF THE TWEED*, *supra* note 177).

*Law Quarterly Review* was dismissive of its claims about England.<sup>180</sup> Though a slight piece, its discussion of Scotland is perceptive in terms of the knowledge of the day. We know he was keen that the history of Scots law be written.<sup>181</sup> If he had planned further research on these lines, it never materialized.<sup>182</sup>

At Oxford, Goudy gave lectures on Roman law for the degrees of B.A. in Jurisprudence and B.C.L. The account he gave of the subjects that he taught seems thorough and conventional for the period: indeed, exactly what one would expect of such classes.<sup>183</sup>

It would be idle to pretend that Goudy made a major contribution as a scholar of Roman law. But it is important to remember that not all contemporary scholars of Roman law had the now almost mythic stature of Paul Krüger, Otto Lenel, or P.-F. Girard; Goudy should not be judged inappropriately. He had the linguistic skills in ancient and relevant modern languages and an excellent knowledge of the discipline; he could understand the leading modern scholarship and appreciate what was at stake. He demonstrated this in his articles on *capitis deminutio* and the authenticity of the Twelve Tables, and in his discussion of the editions of Theophilus with A.F. Murison.<sup>184</sup> It is clear, above all, in his revision of Muirhead's *Historical*

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<sup>180</sup> Book Review, 10 L.Q. REV. 284 (1894) (reviewing FATE OF THE ROMAN LAW NORTH AND SOUTH OF THE TWEED, *supra* note 177); but see Henry Goudy, Book Review, 17 ENG. HIST. REV. 358 (1902) 358-61 (reviewing F.W. MAITLAND, ENGLISH LAW AND THE RENAISSANCE (1901)) where he defends his views.

<sup>181</sup> Whyte, *supra* note 112, at 163.

<sup>182</sup> See *Of Collateral Interest*, 1 LAW BOOK NEWS: MONTHLY REV. CURRENT LEGAL LITERATURE & J. LEGAL BIBLIOG. 266, 266 (1894): "The Lecture ... may be followed by a more extended study of the subject." Book Review, *supra* note 180, at 284: "Professor Goudy has taken up what we cannot but think a hopeless venture."

<sup>183</sup> The papers of J.D.I. Hughes, who took the B.A. in 1914 and the B.C.L. in 1915 contain some notes from Goudy's lectures on Intestate Succession in October 1911, on Actions and Procedure in January 1912 for the B.A. degree and on Possession and Ownership in 1915 for that of B.C.L.: Leeds University Library, MS 428/11, MS 428/13, MS 428/17. MS 428/19 contains also what appear to be lecture notes on possession, though undated.

<sup>184</sup> Henry Goudy, *Capitis Deminutio in Roman Law*, 9 JURID. REV. 132 (1897); Henry Goudy, *Are the XII. Tables Authentic?*, 17 JURID. REV. 93 (1905). See also Henry Goudy, Book Review, 16 ECONOMIC J. 406 (1906) (reviewing W.K. BOYD, THE ECCLESIASTICAL EDICTS OF THE THEODOSIAN CODE (1905)); A.F. MURISON, MEMOIRS OF 88 YEARS (1847-1934) BEING THE BIOGRAPHY OF ALEXANDER

*Introduction* in 1899, where he preserved the integrity of Muirhead's text, even if sceptical of his teacher's views on "primitive Roman institutions," while updating the references, and adding some appendixes, and also in his revision in 1911 of Muirhead's article on "Roman Law" in the *Encyclopædia Britannica*.<sup>185</sup>

In 1906, Goudy published a chapter, "Artificiality of Roman Juristic Classifications," in a *Festschrift* for the Neapolitan professor, Carlo Fadda. In it he explored the significance of the number "four" in the classification of obligations, focusing on Justinian's *Institutes*, arguing it reflected both a desire for artificial symmetry and the significance given to the symbolism of numbers.<sup>186</sup> While one reviewer remarked of it that, "in reality, there are only arguments of an external type, which are far from providing proof," he was encouraged by others to develop further this line of research.<sup>187</sup> This led to *Trichotomy in Roman Law*, in which he extended the research to the number "three" and examined the writers of the classical period, presenting the argument that many of the triples found in Roman law are there simply because of the symbolic value of the number, which encouraged the classical jurists – especially Ulpian – to divide the law in particular ways, ways that were sometimes illogical if approached analytically. If correct, this meant that much ingenious analytical research was valueless.<sup>188</sup>

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FRASER MURISON, 178 (1935); on the issue of Murison's work on Theophilus, Simon Corcoran, *Murison and Theophilus*, 53/2 BULL. INST. CLASS. STUD. 85 (2010) corrects and greatly supplements J. H. Morgan, rev. by Eric Metcalfe, *Murison, Alexander Falconer (1847–1934)*, in OXFORD DICTIONARY NAT'L BIOGRAPHY, <http://www.oxforddnb.com/view/article/35152> (last visited May 11, 2015) (subscription required).

<sup>185</sup> JAMES MUIRHEAD, HISTORICAL INTRODUCTION TO THE PRIVATE LAW OF ROME, v (2<sup>nd</sup> ed. by Henry Goudy, London, Adam & Charles Black 1899); H[enry] Go[udy], *Roman Law*, 23 ENCYCLOPÆDIA BRITANNICA 526 (Hugh Chisholm ed. 1911). See also Henry Goudy, *Justinian*, in 6 CHAMBERS'S ENCYCLOPÆDIA: A DICTIONARY OF UNIVERSAL KNOWLEDGE, 380 (new ed. 1901).

<sup>186</sup> Henry Goudy, *Artificiality of Roman Juristic Classifications*, in 5 STUDI GIURIDICI IN ONORE DI CARLO FADDA PEL XXV. ANNO DEL SUO INSEGNAMENTO, 207 (1906).

<sup>187</sup> Joseph Duquesne, Book Review, 32 NOUVELLE REVUE HISTORIQUE DE DROIT FRANÇAIS ET ÉTRANGER 251, 266 (1908) (reviewing STUDI GIURIDICI IN ONORE DI CARLO FADDA PEL XXV ANNO DEL SUO INSEGNAMENTO (1906)); HENRY GOUDY, TRICHOTOMY IN ROMAN LAW, [3] (1910).

<sup>188</sup> GOUDY, *supra* note 187.

The most detailed review was by Gaston May. He outlined the argument of the book – described as “interesting and learned” – concluding that the “work of Mr Goudy is sufficiently serious and worthy of attention that it encourages the thought of more detailed research that would give a more solid foundation and scope to his thesis.”<sup>189</sup> Roscoe Pound was also cautious. He pointed out that the theory was more convincing when it comes to classification, rather than “the traditional triads;” he demonstrated at some length that one could argue that modern Anglo-American law was full of number symbolism. After his amusing and clever *reductio ad absurdum*, he nonetheless pointed out that Goudy “has called attention to a point of capital importance” that no one could now ignore.<sup>190</sup> The *Classical Review* described it as “a most original contribution, not only to legal science, but to literary history, and even in a sense to anthropology.”<sup>191</sup> Another reviewer gave it the accolade of “scholarly, yet most entertaining, a special merit not usually shared by books on Roman law.”<sup>192</sup>

The work was translated into German as *Dreiteiligkeit im römischen Recht* by no less a figure than Eugen Ehrlich, then Professor of Roman Law at Czernowitz.<sup>193</sup> Goudy’s argument on the futility of seeking logical explanations for triads in classification appealed to the theorist of “living law,” who emphasized the plurality of law and opposed understanding it as a hierarchical structure.<sup>194</sup> In his preface, Ehrlich compared Goudy’s book to the writings of the Dutch Elegant School. He commented that the question with which it was concerned might at first seem trivial, but it repaid

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<sup>189</sup> Gaston May, Book Review, 35 NOUVELLE REVUE HISTORIQUE DE DROIT FRANÇAIS ET ÉTRANGER 89, 89-98 (1911) (reviewing TRICHOTOMY IN ROMAN LAW, *supra* note 187).

<sup>190</sup> R[oscoe] P[ound], Book Review, 24 HARV. L. REV. 683, 685 (1911) (reviewing TRICHOTOMY IN ROMAN LAW, *supra* note 187).

<sup>191</sup> W.W.F., Book Review, 25 CLASSICAL REV. 185, 186 (1911) (reviewing TRICHOTOMY IN ROMAN LAW, *supra* note 187).

<sup>192</sup> E.M. Borchard, Book Review, 6 AM. POL. SCI. REV. 152, 153 (1912) (reviewing TRICHOTOMY IN ROMAN LAW, *supra* note 187).

<sup>193</sup> HENRY GOUDY, DREITEILIGKEIT IM RÖMISCHEN RECHT, AUS DEM ENGLISCHEN ÜBERTRAGEN VON E. EHRLICH (1914).

<sup>194</sup> On Ehrlich, see LIVING LAW: RECONSIDERING EUGEN EHRLICH (Marc Hertogh ed., 2009).

study. He pointed out that the Dutch Elegant School had treated “apparently minor issues thoroughly, with profound learning, and with a lot of spirit.” Study of these works produced the reward of profound understanding of the writings of the Roman jurists. Goudy’s work was “quite in the style of the old Dutch Elegant School:”

Almost every page provides insight into any question for which the legal historians have been looking in vain for an explanation, and hardly anyone who receives its impact can avoid thinking that, due to this impressive study, Roman law now wears a completely different face from before.<sup>195</sup>

High praise indeed. It also suggests that what appealed to Ehrlich was Goudy’s search for explanations of the texts not located in dogmatic legal reasoning. Structures were explained by reference to a culture outwith a closed system of legal norms. Lawson described Goudy as a “Roman lawyer of the old school, bred in the old Pandectist tradition;”<sup>196</sup> but *Trichotomy in Roman Law* is not a typical Pandectist work. With some justification, Lawson identifies the significant development in study of Roman law in Goudy’s era as the search for interpolations, the *Interpolationenjagd*,<sup>197</sup> and it is in opposition to this that he classes Goudy’s approach as Pandectist. This may even be the key to Goudy’s lack of scholarship in Roman law: perhaps he found the Pandectist tradition sterile, but was not excited by textual criticism, in the way, for example, his teacher Muirhead had been. It is in this respect interesting in contrast to note his perceptive explorations of comparative legal history through discussions of brocards and maxims.<sup>198</sup> His concerns were more historical and humanistic than

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<sup>195</sup> Ehrlich, *Vorrede des Übersetzers*, in GOUDY, *supra* note 193, [III]-IV.

<sup>196</sup> LAWSON, *supra* note 113, at 82.

<sup>197</sup> *Id.* at 79, 82; WILHELM KALB, DIE JAGD NACH INTERPOLATIONEN IN DEN DIGESTEN (1897); W.W. Buckland, *Interpolations in the Digest*, 33 YALE L. J. 343 (1924); Otto Lenel, *Interpolationenjagd*, 45 ZEITSCHRIFT DER SAVIGNY STIFTUNG (RÖM. ABT.) 17 (1925). For a modern assessment, see David Johnston, *Justinian’s Digest: The Interpretation of Interpolation*, 9 OXF. J. LEG. STUD. 149 (1989).

<sup>198</sup> Henry Goudy, *Two Ancient Brocards*, in ESSAYS IN LEGAL HISTORY READ BEFORE THE INTERNATIONAL CONGRESS OF HISTORICAL STUDIES HELD IN LONDON IN 1913, 215 (Paul Vinogradoff

textual and dogmatic, and it is perhaps revealing that De Zulueta suggested that “his real field might have been the mediæval period, in the linking up of mediæval civil law with modern law.” He thought Goudy’s training in Scots law and Pandectism and knowledge of the Gloss would have enabled this.<sup>199</sup> He certainly owned two medieval manuscripts of Roman law, one of the *Institutes*, the other of the *Digestum novum*.<sup>200</sup> It may also be significant for Goudy’s approach to law and legal study that he translated Rudolf von Jhering’s *Jurisprudenz des taglichen Lebens* in 1904, and regretted the lack of a translation of the author’s *Geist des römischen Rechts*.<sup>201</sup>

Goudy may not have proved a prolific scholar; but he was active in the University and to some extent in public life. He served as a curator of the Bodleian Library (he had earlier been one of the Advocates Library), even writing to *The Times* about its interests when it was thought that reforms of copyright law might prejudice them.<sup>202</sup> He also spoke for the Library’s interests before Convocation, and served for several years as Chairman of its Standing Committee.<sup>203</sup> As Regius Professor of Civil Law, he regularly and frequently presented individuals – such as Roosevelt – for graduation as D.C.L. *honoris causa*. *The Times* has many reports of his doing so.<sup>204</sup> Given that the degree of D.C.L. was conferred not just on worthy scholars, but was the degree awarded to honour public individuals, such as visiting politicians, explorers, and the like, the task – as de Zulueta pointed out – was onerous, since

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ed. *Edinburgh School Board* 1913); Henry Goudy, *Legal Possession: Two Maxims*, in CELEBRATION LEGAL ESSAYS: TO MARK THE TWENTY-FIFTH YEAR OF SERVICE OF JOHN H. WIGMORE AS PROFESSOR OF LAW IN NORTHWESTERN UNIVERSITY, 151 (Albert Kocourek ed. 1919).

<sup>199</sup> De Zulueta, *supra* note 5, at xxv.

<sup>200</sup> See A.G. WATSON, A DESCRIPTIVE CATALOGUE OF THE MEDIEVAL MANUSCRIPTS OF ALL SOULS COLLEGE, OXFORD 220-21 (1997) (All Souls MSS 315-16).

<sup>201</sup> RUDOLF VON JHERING, LAW IN DAILY LIFE: A COLLECTION OF LEGAL QUESTIONS CONNECTED WITH THE ORDINARY EVENTS OF EVERYDAY LIFE. FROM THE GERMAN OF RUD. VON JHERING WITH NOTES AND ADDITIONS BY HENRY GOUDY, D.C.L., (1904); Henry Goudy, *Translator’s Preface*, in *Id.*, at viii.

<sup>202</sup> Letter from Henry Goudy to the Editor (Nov. 24, 1911), *THE TIMES*, Nov. 29, 1911, at 16.

<sup>203</sup> De Zulueta, *supra* note 5, xxiv; *University Intelligence*, *THE TIMES*, Nov. 15, 1905, at 11.

<sup>204</sup> *University Intelligence*, *THE TIMES*, Mar. 19, 1897, at 11; *The Dominion Premiers at Oxford. Conferment of Degrees*, *THE TIMES*, June 12, 1911, at 5.



Goudy was expected to produce a suitable Latin address for each.<sup>205</sup> He served as a delegate for the non-collegiate students, and, as he became more senior in the College, deputized for the Warden of All Souls.<sup>206</sup> When there were disturbances in Oxford during the visit of the Prince of Wales to open the new Town Hall on 12 May 1897, Goudy (with Dicey) attended the court of the city magistrates and later commented on the proceedings and the security of the convictions in a letter to *The Times*.<sup>207</sup> In 1909, this cosmopolitan son of the Irish Presbyterian manse was chosen to represent the University at the 360<sup>th</sup> anniversary of the University of Geneva, and the 400<sup>th</sup> birthday of John Calvin.<sup>208</sup> A lighter duty was playing golf for the team of Oxford Graduates in their match against the House of Commons.<sup>209</sup>

Goudy's sense of the importance of service and duty and the radicalism of his Liberal views are evident in other ways. He supported "The Poor Man's Lawyer Movement," arguing for state-funded legal aid.<sup>210</sup> He attended meetings of the Christian Social Union.<sup>211</sup> He was very actively involved with Ruskin College.<sup>212</sup> His attitudes are revealed by his speech in presenting Canon S.A. Barnett for the degree of D.C.L. in 1911. Barnett was a notable social reformer, who established the first University Settlement in the East End of London, Toynbee Hall. Goudy emphasised

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<sup>205</sup> De Zulueta, *supra* note 5, xxiv; see, e.g., HENRY GOUDY, LAUDATIONES DOCTORUM IN JURE CIVILI HONORIS CAUSA CREATORUM IN THEATRO SHELDONIANO ENCAENIIS MCMIV (1904?) (copy in Taylor Library, University of Aberdeen); *Great Ceremony at Oxford. Conferring of Degrees*, THE SCOTSMAN, June 27, 1907, at 7.

<sup>206</sup> *University Intelligence*, THE TIMES, Feb. 28, 1900, at 12; *University Intelligence*, THE TIMES, Dec. 2, 1908, at 8.

<sup>207</sup> *Charges against Oxford Undergraduates*, THE TIMES, May 15, 1897, at 14; Letter from Henry Goudy to the Editor (May 15, 1897), THE TIMES, May 18, 1897, at 5.

<sup>208</sup> *University Intelligence*, THE TIMES, Feb. 11, 1909, at 7.

<sup>209</sup> *Golf*, THE TIMES, May 9, 1896, at 15.

<sup>210</sup> *The Poor Man's Lawyer Movement*, THE TIMES, Oct. 30, 1901, at 2.

<sup>211</sup> *Lord Hugh Cecil and Sir John Gorst at Oxford*, THE TIMES, Nov. 17, 1903, at 6.

<sup>212</sup> Letter from various (incl. Henry Goudy) to the Editor (Mar. [1911]), *Ruskin College, Oxford, The Building Fund*, THE TIMES, May 10, 1911, at 8; *Ruskin College, Oxford, The New Buildings*, THE TIMES, Feb. 9, 1912, at 12; *Ruskin College, Oxford. History and Development*, THE TIMES, Feb. 21, 1913, at 9.

this and Barnett's endeavours "to elevate the working classes by education."<sup>213</sup> He was also part of the group who opposed acceptance by Oxford of the terms of the Squire Bequest with its preference for Founder's Kin and restriction to those domiciled in England, members of the Church of England, who intended to become a barrister or solicitor or to take holy orders in the Church of England.<sup>214</sup> The bequest went to Cambridge.<sup>215</sup> It is easy to understand why the great-grandson of James Porter opposed these terms.

On 8 November 1895, Goudy had addressed the Scots Law Society in Edinburgh on "Law Teaching in the Universities."<sup>216</sup> His interest in legal education went beyond the mere performance of his contractual duties, and he was closely involved with Edward Jenks in the foundation of the Society of Public Teachers of Law (S.P.T.L.).<sup>217</sup> He had known Jenks well when the latter was Reader in English Law in Oxford; indeed they had acted together, with Dicey, in opposition to the terms of the Squire bequest.<sup>218</sup> Jenks had moved to be a very successful Principal and Director of Legal Services to the Law Society in 1903; but the two kept in touch.<sup>219</sup> Goudy duly became first President of the Society, with Jenkins, the main mover behind its foundation, as Honorary Secretary.<sup>220</sup> Goudy continued active in the Society. He dedicated *Trichotomy in Roman Law* "To His Colleagues of 'The Society

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<sup>213</sup> *University Intelligence*, THE TIMES, Aug. 11, 1911, at 2; E.K. Abel, *Middle Class Culture for the Urban Poor: The Educational Thought of Samuel Barnett*, 52 SOCIAL SERVICE REV. 596 (1978); E.K. Abel, *Toynbee Hall, 1884-1914*, 53 SOCIAL SERVICE REV. 606 (1979).

<sup>214</sup> *University Intelligence*, THE TIMES, 13 June 1901, at 7.

<sup>215</sup> C.N.L. BROOKE, A HISTORY OF THE UNIVERSITY OF CAMBRIDGE. VOLUME IV 1870-1990, 224 (1993).

<sup>216</sup> *Classified Advertisement, University of Edinburgh: Scots Law Society*, THE SCOTSMAN, Nov. 4, 1895, at 1.

<sup>217</sup> FIONA COWNIE AND RAYMOND COCKS, "A GREAT AND NOBLE OCCUPATION!" THE HISTORY OF THE SOCIETY OF LEGAL SCHOLARS, 1-5 (2009); A.D. Bowers, *The Founding of the Society*, J. SOC'Y OF PUB. TCHRS LAW N.S. 1, 1-3 (1959).

<sup>218</sup> LAWSON, *supra* note 113, at 93-97.

<sup>219</sup> Bowers, *supra* note 216, at 1-3.

<sup>220</sup> COWNIE AND COCKS, *supra* note 217, at 4-5.

of Public Teachers of Law in England and Wales.’’<sup>221</sup> He was presumably influential in the elections of the great German legal historian, Heinrich Brunner, and of the noted French Roman lawyer, P.-F. Girard (as well as of Rankine, his former colleague at Edinburgh), as Honorary Members in 1909.<sup>222</sup> He was almost certainly a supporter of the election of Otto von Gierke, just before the First World War, as another. In 1915 he spoke against a motion proposing expulsion of Brunner and von Gierke from the list of Honorary Members.<sup>223</sup> Goudy certainly met Gierke in 1913 at the International Congress of Historical Studies in London, and may well have known him before.<sup>224</sup>

Goudy’s Presidential address at the Meeting of July 1909 set out, as Cownie and Cocks have emphasised, a “public” role for a law teacher, going beyond the mere fact that the Society was of “public” teachers of law: they describe him as identifying a member of the Society as discharging “duties that were both highly intellectual and public.”<sup>225</sup> A few months after Goudy had commented on Muirhead’s diligent scholarship as having received little reward or public acknowledgement, he now stated: “Our posts as teachers ... do not bring us any great emoluments or honours.” Nonetheless, “the dignity of our office we must hold and assert to be inferior to none.” He added:

We must honestly endeavour to do what we can for our students, both by word and writing, but especially by word. Because upon us undoubtedly rests, in considerable measure, responsibility for the future competency of our judges and barristers and solicitors, and to some extent also of our legislators, statesmen, and administrators. We must, too, remember that the future reform

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<sup>221</sup> GOUDY, *supra* note 187, at [1].

<sup>222</sup> Bowers, *supra* note 217, at 7.

<sup>223</sup> COWNIE AND COCKS, *supra* note 217, at 32-33.

<sup>224</sup> *Introductory Note*, in *ESSAYS IN LEGAL HISTORY* *supra* note 198, vi at vi.

<sup>225</sup> COWNIE AND COCKS, *supra* note 217, at 16-17.

of the laws, and consequent amelioration of the social and political conditions in this country, may largely depend upon the knowledge we impart to, and the ideas we instil into, the minds of our pupils.<sup>226</sup>

Despite deteriorating health, Goudy taught in the first half of 1915.<sup>227</sup> Ill health prevented him from teaching in the autumn; Professor A.F. Murison (1847-1934) of University College thereafter deputized for him.<sup>228</sup> (Murison had earlier stepped in during Goudy's absence in Egypt.)<sup>229</sup> But Goudy's sense of duty led him to serve once more as President of the S.P.T.L. for 1918-19.<sup>230</sup> At the end of his second Presidency, he delivered an important address that ranged over current ambitions for an Imperial Law School in London, the establishment of a Ministry of Justice, and codification of the laws.<sup>231</sup> The last was a major interest of his, going back to his days in Edinburgh. As an admirer of David Dudley Field, Goudy, like his teacher James Muirhead and friend Aeneas Mackay, was a keen proponent of codification, even writing the entry on "Code" for *Chambers's Encyclopædia*.<sup>232</sup> In 1886, he borrowed from the Advocates Library both Amos's *English Code* and the *Civil Code of Lower Canada*.<sup>233</sup> When he opened his class in his second year of teaching at Edinburgh he delivered a lecture on the sources of positive law, arguing that in complex societies

<sup>226</sup> Henry Goudy, *Printed Address*, found quoted in COWNIE AND COCKS, *supra* note 217, at 5, 15.

<sup>227</sup> Leeds University Library, MS 428/17 (lectures given in 1915).

<sup>228</sup> *News in Brief*, THE TIMES, Oct. 15, 1915, at 5; MURISON, *supra* note 184, at 190-91 (Murison felt that Oxford, in particular the Warden of All Souls (then F.W. Pember), treated him shabbily).

<sup>229</sup> MURISON, *supra* note 228) at 177.

<sup>230</sup> *News in Brief*, THE TIMES, July 11, 1918, at 3.

<sup>231</sup> *Public Teachers of Law*, THE TIMES, July 4, 1919, at 11; HENRY GOUDY, ADDRESS ON LAW REFORM: IMPERIAL LAW SCHOOL: MINISTRY OF JUSTICE: CODIFICATION. DELIVERED AT GRAY'S INN ... ON JULY 3, 1919 (1919).

<sup>232</sup> Goudy, *supra* note 103; Henry Goudy, *Code*, in 3 CHAMBERS'S ENCYCLOPÆDIA: A DICTIONARY OF UNIVERSAL KNOWLEDGE, 326 (new ed. 1901); JAMES MUIRHEAD, CODIFICATION OF THE COMMERCIAL LAW: AN ADDRESS READ BEFORE THE EDINBURGH CHAMBER OF COMMERCE, 25<sup>TH</sup> JANUARY 1864 (1864); Henry Goudy, *Codification: Its Meaning and History*, in: ADDRESSES ON CODIFICATION OF LAW, 9 (1893). Alan Rodger, *The Codification of Commercial Law in Victorian Britain*, 109 L.Q. REV. 570 (1992) and Cairns, *supra* note 60, at 26-28 give the background.

<sup>233</sup> NLS, FR 286, Dec. 8, 1886, Dec. 22, 1886; SHELDON AMOS, AN ENGLISH CODE, ITS DIFFICULTIES AND THE MODES OF OVERCOMING THEM: A PRACTICAL APPLICATION OF THE SCIENCE OF JURISPRUDENCE (1873); CODE CIVIL DU BAS CANADA D'APRÈS LE RÔLE AMENDÉ DÉPOSÉ DANS LE BUREAU DU GREFFIER DU CONSEIL LEGISLATIF (1866).

with elaborate laws codification was necessary, as had happened with the great statutes codifying mercantile law in the United Kingdom.<sup>234</sup> He later argued in favour of a general code of mercantile law for the whole United Kingdom, later to be extended to the Colonies.<sup>235</sup> In reviewing the *Digest of English Law* edited by his friend Jenks, he commented: “If, as one may hope, there is to be at some not distant date codification of the law of England or, better, of the laws of the United Kingdom, this work will be found of great service to those entrusted with the task.”<sup>236</sup> Though Goudy did recognize the difficulties in the way of producing a Code for the whole of the United Kingdom, in hoping nonetheless for one eventually, he would have agreed with Aeneas Mackay who had stated that “when the time came for the Union of the laws of England and Scotland, many principles – he should say even many parts, of our Scottish jurisprudence would pass into the future British code.”<sup>237</sup>

Goudy’s powerful sense of duty is further reflected in his activities in international law, which also demonstrate his cosmopolitan outlook. He was active in the *Institut de Droit International* (of which his Edinburgh teacher, Lorimer, had been a founding member), having become an Associate Member.<sup>238</sup> He attended its meetings regularly.<sup>239</sup> He participated in its work on a Code of Naval Warfare.<sup>240</sup> He was also a member of the International Law Association, which had been established in 1873 as the Association for the Reform and Codification of the Law of Nations. In 1901, at its Glasgow meeting, a paper of his was read advocating that marriage should

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<sup>234</sup> *Edinburgh University Law Classes*, THE SCOTSMAN, Oct. 20, 1891, at 3.

<sup>235</sup> *Codification of Mercantile Law*, THE SCOTSMAN, Jul. 14, 1896, at 8.

<sup>236</sup> Henry Goudy, *A Digest of English Law*, 18 J. COMP. LEGIS. & INT’L L. N.S. 133, 135 (1918).

<sup>237</sup> GOUDY, *supra* note 231, at 22-24; *Scots Law Society*, THE SCOTSMAN, Nov. 8, 1881, at 4.

<sup>238</sup> *Institute of International Law*, THE TIMES, Aug. 9, 1895, at 4; .

<sup>239</sup> *The Institute of International Law*, THE TIMES, Aug. 25, 1898, at 6; *The Institute of International Law*, THE TIMES, 25 Aug 1898, at 6 (The Hague); *The Institute of International Law*, THE TIMES, Sept. 26, 1904, at 4 (Edinburgh); *International Law. Meeting of the Institute at Christiania*, THE TIMES, Sept. 4, 1912, at 2 (Christiania); *International Law. To-Day’s Conference at Oxford*, THE TIMES, Aug. 4, 1913, at 5 (Oxford).

<sup>240</sup> *Code of Naval War: Work of Institute of International Law*, THE SCOTSMAN, Aug. 13, 1913, at 11.

be a civil contract, with a religious ceremony following only if the parties wished. This, he thought, could form the foundation of a common Imperial Code on the topic.<sup>241</sup> No doubt his Ulster and Scottish Presbyterian background influenced his thinking here. In 1911, the issue became linked with Ulster Unionism because of the *cause célèbre* of Agnes McCann. She was a protestant mother in Ulster supposedly deprived of her children by her Catholic husband, because she would not remarry him according to Catholic rite and bring up their children as Catholics, following the recent decree *Ne Temere*.<sup>242</sup> Goudy's attitude to the actual case was in fact somewhat sceptical; but it provided him with the opportunity to publicize more widely his argument that making marriage a purely civil contract throughout the United Kingdom would avoid many such problems, including problems that had arisen in the Church of England over remarriage of divorced persons.<sup>243</sup> He stimulated a debate in *The Times*.<sup>244</sup> *The Scotsman* also took up the issue.<sup>245</sup>

For the duration of the First World War neither the *Institut de Droit International* nor the International Law Association met. But Goudy remained interested in international law matters: indeed the War intensified his concerns. In 1915, he was one of the founders of the Grotius Society, the aim of which was "to afford an opportunity to those interested in International Law of discussing from a

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<sup>241</sup> Henry Goudy, *The Marriage Laws*, in: INTERNATIONAL LAW ASSOCIATION, REPORT OF THE TWENTIETH CONFERENCE. HELD AT GLASGOW AUGUST 20<sup>TH</sup>-23<sup>RD</sup>, 1901, 239 (1901).

<sup>242</sup> See, e.g., R.M. Lee, *Intermarriage, Conflict and Social Control in Ireland: The Decree Ne Temere*, 17 ECONOMIC AND SOCIAL REV. 11 (1985); Eoin de Bhaldraithe, *Mixed Marriages and Irish Politics: The Effect of "Ne Temere"*, 77 STUDIES: AN IRISH QUAR. REV. 284, 290-92 (1988); Alan Megahey, "God Will Defend the Right:" *The Protestant Churches and Opposition to Home Rule*, in: DEFENDERS OF THE UNION: A SURVEY OF BRITISH AND IRISH UNIONISM SINCE 1801, 159, 166-67 (D.G. Boyce and Alan O'Day eds. 2001).

<sup>243</sup> Letter from Henry Goudy to the Editor (Feb. 9, 1911), THE TIMES, Feb. 13, 1911, at 4.

<sup>244</sup> *Civil Marriage*, THE TIMES, Feb. 17, 1911, at 10; Letter from Hastings Rashdall to the Editor (Feb. 15, 1911), THE TIMES, Feb. 18, 1911, at 6; Letter from Henry Goudy to the Editor (Feb. 20, 1911), *Compulsory Civil Marriage*, THE TIMES, Feb. 24, 1911, at 9; Letter from Hastings Rashdall to the Editor (Mar. 1, [1911]), *Compulsory Civil Marriage*, THE TIMES, Mar. 4, 1911, at 11; Letter from Earl Russell to the Editor (Mar. 7, [1911]), *Compulsory Civil Marriage*, THE TIMES, Mar. 8, 1911, at 10; Letter from Henry Goudy to the Editor (n. d.), *Compulsory Civil Marriage*, THE TIMES, Mar. 17, 1911, at 10.

<sup>245</sup> THE SCOTSMAN, Mar. 1, 1911, at 8.

cosmopolitan point of view the acts of the belligerent and neutral States in the present war, and the problems to which it is almost daily giving birth.” Membership was restricted to British subjects.<sup>246</sup> Goudy was the first Vice-President; but the President, Lord Reay, being unwell, much of the business initially fell on Goudy, even though his own health was deteriorating. He nonetheless carried on his activities with the Society travelling from Oxford or Malvern for monthly meetings in London.<sup>247</sup> The next year he was elected as President.<sup>248</sup> In 1919, Sir John Macdonell succeeded him in the office.<sup>249</sup> Goudy provided Introductions to the two first volumes of what later became the Society’s Transactions.<sup>250</sup> He sat on the committee appointed on 1 May 1917 to consider the legal status of submarines.<sup>251</sup> The report had been completed by April 1918, but the Admiralty refused permission for its publication.<sup>252</sup> Related to this service for the Grotius Society, he had published two papers, both translated by Henry de Varigny, in an Italian periodical (“La guerre et le droit international,” and “Une Ligue des Nations”).<sup>253</sup> When the peace Treaty was being considered, he examined article twenty-two of the Covenant for a League of Nations, which dealt with government constituted by a mandate from the League of Nations. He explored it through insights gathered from Roman law.<sup>254</sup> But his health started to deteriorate

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<sup>246</sup> Henry Goudy, *Introduction*, 1 PROBLEMS OF THE WAR 1, 1 (1915); *The Grotius Society*, THE TIMES, Mar. 3, 1916, at 3; G. Tracey Watts, *Forty Years of the Grotius Society*, 42 TRANSACTIONS OF THE GROTIUS SOC’Y 193 (1956).

<sup>247</sup> E.A. Whittuck, *Henry Goudy*, 7 TRANSACTIONS OF THE GROTIUS SOC’Y xxvi, xxvii (1922); *The Birthday of Grotius*, THE TIMES, Apr. 11, 1916, at 5; *[Note at end of] King’s Bench Division*, THE TIMES, July 27, 1917, at 4.

<sup>248</sup> *The Grotius Society*, THE TIMES, May 4, 1917, at 9.

<sup>249</sup> *The Influence of Grotius*, THE TIMES, May 14, 1919, at 9.

<sup>250</sup> Goudy, *supra* note 246; Henry Goudy, *Introduction*, 2 PROBLEMS OF THE WAR [xvii] (1916).

<sup>251</sup> *Appendix. Report of the Committee on the Legal Status of Submarines*, 14 TRANSACTIONS OF THE GROTIUS SOC’Y 155 (1928).

<sup>252</sup> *Report of the Proceedings of the Third Annual General Meeting, April 10<sup>th</sup>, 1918*, 4 TRANSACTIONS OF THE GROTIUS SOC’Y xiii, xv (1918).

<sup>253</sup> Henry Goudy, *La guerre et le droit international*, 20 *Scientia (Rivista di Scienza)* 231 (1916) (not seen); Henry Goudy, *Une Ligue de Nations*, 25 *SCIENTIA (RIVISTA DI SCIENZA)* page unknown (1919) (not seen).

<sup>254</sup> Henry Goudy, *On Mandatory Government in the Law of Nations*, 1 J. COMP. LEGIS. & INT’L L. 3d ser. 175 (1919).

significantly about this time. This was presumably why he sent his apologies for failure to attend to the A.G.M. of the Grotius Society in 1920.<sup>255</sup> But despite his health problems he served in 1920 as a trustee for the Edward Fry Library of International Law.<sup>256</sup>

#### *F. International Links, Illness and Death*

In the words of de Zulueta, Goudy was a “citizen of the world in the best sense,” one who “cultivated assiduously relations with foreign scholars;” this meant that the Great War was particularly distressing for Goudy, as pupils and friends were killed, and he lost contact with German professors, such as Otto Lenel and Otto von Gierke, who had become friends.<sup>257</sup> His close friend Schipper died in 1915. But he helped and assisted refugees, such as the talented brothers Charles and Fernand De Visscher, both of whom spent some time in Oxford.<sup>258</sup> It was presumably through Goudy that Fernand De Visscher came to publish an article in the *Juridical Review*;<sup>259</sup> Goudy publicized Charles De Visscher’s work *La Belgique et les juristes allemands*, Lausanne 1916, through an article in the same periodical.<sup>260</sup> He was supportive of G. Kaeckenbeeck, a young Belgian who studied in Oxford during the war and became a tutor at Magdalen College, and was appointed to a lectureship at the University of London, writing the introduction to Kaeckenbeeck’s monograph on international rivers.<sup>261</sup>

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<sup>255</sup> *Minutes of the Proceedings of the Fifth Annual General Meeting*, 6 TRANSACTIONS OF THE GROTIUS SOC’Y xiv (1920).

<sup>256</sup> *The Edward Fry Library of International Law*, THE SCOTSMAN, Dec. 7, 1920, at 5.

<sup>257</sup> De Zulueta, *supra* note 5, at xxv; Whittuck, *supra* note 247, at xxviii.

<sup>258</sup> See *Discours de Monsieur P. W. Duff*, 5 REVUE INTERNATIONALE DES DROITS DE L’ANTIQUITÉ 535 (1950); *Discours de Monsieur H. F. Jolowicz*, 5 REVUE INTERNATIONALE DES DROITS DE L’ANTIQUITÉ 533 (1950).

<sup>259</sup> Fernand De Visscher, *La conductio ex lege et la Lex Julia de adulteriis*, 28 JURID. REV. 25 (1916).

<sup>260</sup> Henry Goudy, *The Neutrality of Belgium*, 29 JURID. REV. 119 (1917). Another Belgian, Jean Fischbach, published an article in two parts in the Scottish periodical: Jean Fischbach, *Les cours de justice et la procédure en Belgique*, 27 JUR. REV. 431 (1915) and 28 JUR. REV. 164 (1916).

<sup>261</sup> Henry Goudy, *Introductory Note*, in G. KAECKENBEECK, INTERNATIONAL RIVERS. A MONOGRAPH BASED ON DIPLOMATIC DOCUMENTS, xxv (1918).



By this time continuing ill health must have led Goudy to realise he would never resume teaching. In 1919, he accordingly resigned from the chair with effect from June 21.<sup>262</sup> This ended his Fellowship of All Souls; but on June 20 it was reported that the Fellows had elected him an Honorary Fellow, an occasion he marked by donating to the College his medieval manuscript of Justinian's *Institutes* (in his will he was to leave it his *Digestum novum*).<sup>263</sup> In October, he was appointed Professor Emeritus.<sup>264</sup> By late 1920, Goudy was suffering from increasing paralysis, particularly of his hand.<sup>265</sup> He moved to 29 Forester Road, Bath, where he died on March 3, 1921, and was buried on March 7, at Lansdown Cemetery.<sup>266</sup>

#### IV. THE SIGNIFICANCE OF MUIRHEAD FOR GOUDY

In his inaugural lecture in Edinburgh, Goudy had praised Muirhead's scholarly work as entitling "him to a place alongside such scholars as Studemund, Krueger and Mommsen."<sup>267</sup> No doubt this was an exaggeration; but it is a revealing comparison nonetheless, indicative of more than mere affectionate piety towards his deceased teacher. What links Wilhelm Studemund, Paul Krüger, and Theodore Mommsen is that they all worked on reconstructing the texts of Justinian's Digest and Code and Gaius's Institutes.<sup>268</sup> While Studemund is now obscure, Mommsen and Krüger are still famous as heroic scholars of the nineteenth century.<sup>269</sup> Goudy once more reverted to Muirhead's qualities in his inaugural lecture at Oxford, in which he described his

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<sup>262</sup> *Professor Goudy to Resign*, THE TIMES, June 19, 1919, at 14.

<sup>263</sup> *Honorary Fellows of All Souls*, THE TIMES, June 20, 1919, at 9; *Wills and Bequests*, THE TIMES, July 7, 19021, at 14; WATSON, *supra* note 200, at 220-21.

<sup>264</sup> *Professor Emeritus of Law*, THE TIMES, Oct. 22, 1919, at 9.

<sup>265</sup> Letter from S. Moncrieff Penney to the Editor (Mar. 8, 1921), *The Late Professor Goudy*, THE SCOTSMAN, Mar. 14, 1921, at 9.

<sup>266</sup> *Funerals. Dr. Henry Goudy*, THE TIMES, Mar. 9, 1921, at 15.

<sup>267</sup> *Edinburgh University Civil Law Class*, THE SCOTSMAN, May 14, 1890, at 7.

<sup>268</sup> John Hessler, *Editing Justinian's Corpus: A Study of the Paul Krueger Archive*, 103 LAW LIBR. J. 459 (2011).

<sup>269</sup> FRANZ WIEACKER, *HISTORY OF PRIVATE LAW IN EUROPE WITH PARTICULAR REFERENCE TO GERMANY*, 331-32 (Tony Weir trans. 1995).

inaugural lecture at Edinburgh as having contained the “éloge of a former master and friend, whose all too early death deprived the legal profession of a profound scholar and most able exponent of the Roman Law ... whose edition of Gaius and ‘Historical Introduction to the Roman Law’ have received just recognition on this side the Tweed as they have in Scotland and abroad.”<sup>270</sup> Mackintosh described Goudy’s 1899 edition of Muirhead’s *Historical Introduction* as involving “pious care.”<sup>271</sup> Scott Moncrieff Penney described Goudy’s succeeding Muirhead as “no easy thing to do.”<sup>272</sup> In his review of Hannis Taylor’s book, Goudy emphasised not just the labour carried out by Muirhead, but also his impact on the standard of Roman law in Britain as a whole.

Muirhead died relatively young. His significant publications were all in the last decade of his life. We know he was working on an edition of Justinian’s *Institutes*; the papers had been given to Goudy who at one time considered publishing them.<sup>273</sup> Goudy was acutely aware of Muirhead’s qualities and skills. At the time of his review of Taylor’s book, he had not yet published his sole, short, monograph in the discipline, *Trichotomy in Roman Law*. He must have been conscious of his own comparative lack of achievement in the field in contrast to that of Muirhead, who could be seen as an original scholar. This no doubt fuelled his animus against Taylor.

From a prosperous Edinburgh family, Muirhead had studied arts and law at the University of Edinburgh as well as law at that of Heidelberg, where he had attended the classes of the famous Pandectist, C.A. von Vangerow. He was admitted as an advocate on January 31, 1857, being called to the English bar on June 6 of the same year. He pursued a career as a member of the Faculty of Advocates in Edinburgh, and

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<sup>270</sup> GOUDY, *supra* note 177, [3].

<sup>271</sup> James Mackintosh, Book Review, 12 JURID. REV. 199, 200 (1900) (reviewing HISTORICAL INTRODUCTION, *supra* note 185).

<sup>272</sup> Letter from S. Moncrieff Penney to the Editor (Mar. 8, 1921), *The Late Professor Goudy*, THE SCOTSMAN, Mar. 14, 1921, at 9.

<sup>273</sup> *Edinburgh University Civil Law Class*, THE SCOTSMAN, May 14, 1890, at 7.

in 1862 he was appointed Professor of Civil Law in Edinburgh. Like Goudy later, Muirhead also continued his career at the bar, serving as a Conservative Advocate Depute in 1874; in 1880 he became Sheriff of Chancery and in 1885 Sheriff Principal of Stirling, Dumbarton and Clackmannan.<sup>274</sup>

Muirhead published two major works. The first was an edition of *The Institutes of Gaius and Rules of Ulpian* (1880).<sup>275</sup> Muirhead used Gaius' *Institutes* in his class.<sup>276</sup> In 1866, the German scholar Wilhelm Studemund had started on a new transcription of the Verona palimpsest manuscript that was the basis of the various editions of Gaius that Muirhead had recommended to his students. Studemund's work was published under the title *Apographum* in 1874, with special fonts created to produce a facsimile of the manuscript.<sup>277</sup> Muirhead had purchased a copy of Studemund's *Apograph* when it had appeared. He used it to make corrections and amendments in his own personal copy of Gaius. He recounted that he had eventually made so many, and judged them to be sufficiently important, that he decided that he should prepare an edition and translation for the benefit of students.<sup>278</sup> Muirhead's work was well received. On February 10, 1880, Sir Frederick Pollock praised the volume in a letter to Oliver Wendell Holmes; he also reviewed it favourably in the *Saturday Review*.<sup>279</sup> Pollock's interest lay in the work's juridical content, and the insights into comparative jurisprudence that could be derived from it. Though he was

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<sup>274</sup> Cairns, *supra* note 60, at 3-9, 28-31.

<sup>275</sup> THE INSTITUTES OF GAIUS AND RULES OF ULPIAN: THE FORMER FROM STUEMUND'S APOGRAPH OF THE VERONA CODEX (James Muirhead ed., Edinburgh, T. & T. Clark 1880).

<sup>276</sup> Cairns, *supra* note 60, at 11-15.

<sup>277</sup> INSTITUTES OF GAIUS, *supra* note 275, ix-xi; GAII INSTITUTIONUM COMMENTARIUM QUATTUOR CODICIS VERONENSIS DESUO COLLATI APOGRAPHUM CONFECIT ET IUSSU ACADEMIAE REGIAE SCIENTIARUM BEROLINENSIS EDIDIT GULIELMUS STUEMUND. ACCEDIT PAGINA CODICIS VERONENSIS PHOTOGRAPHICE EFFICTA (Leipzig, Hirzel 1874).

<sup>278</sup> INSTITUTES OF GAIUS, *supra* note 275, at [v]-vi. After Muirhead's death, his personal copy of the APOGRAPHUM was purchased by the Advocates Library in Edinburgh, and it is now in the collection of the National Library of Scotland: NLS, Pressmark H.27.a.17.

<sup>279</sup> Letter from Sir Frederick Pollock to O.W. Holmes (Feb. 10, 1880), in: 1 POLLOCK-HOLMES LETTERS, *supra* note 14, at 13-14; Frederick Pollock, *Muirhead's Gaius and Ulpian*, 49 SATURDAY REV. 286 (1880) (reviewing INSTITUTES OF GAIUS, *supra* note 275).

not a specialist scholar of Roman law, he did discuss Muirhead's critical notes, commenting favourably on the author's familiarity with contemporary German scholarship. Better able to judge Muirhead's technical expertise with the material was the French scholar, Ernest Dubois. A Professor at Nancy, Dubois had also embarked on a new edition of Gaius drawing on Studemund's *Apograph*.<sup>280</sup> In his preface he noted that five earlier editions of Gaius had been prepared using Studemund's work. The two editions that, in Dubois' view, had displayed the most "praiseworthy strictness" were that of Studemund himself working with Krüger (1877) and that of Muirhead.<sup>281</sup> In discussing the restoration of the text in the various editions of Gaius, Dubois singled out Muirhead's edition:

Finally, this very year, there appeared at Edinburgh, through the industry of Mr Muirhead, an edition of Gaius that does like honour to the actual state of the teaching of Roman law in Scotland. It demonstrates that scholars there are aware of the most recent publications on the Continent; moreover, its author is cautious about expressing his own personal view, but when he does so expresses it independently and, more than once, felicitously.<sup>282</sup>

There is constant reference to Muirhead's work in the French scholar's own critical apparatus. There is no need to explore the nineteenth-century scholarship further. Muirhead evidently had a high and sophisticated level of knowledge of Roman law and its contemporary literature, such that he could exercise the critical skills necessary to understand the problems with the text and work on restoring it. The book was reprinted in 1895.

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<sup>280</sup> INSTITUTES DE GAIUS. 6<sup>E</sup> EDITION (1<sup>RE</sup> FRANÇAISE) D'APRÈS L'*APOGRAPHUM* DE STUEMUND ... SUIVIE D'UNE TABLE DES LEÇONS NOUVELLES (Ernest Dubois ed., Paris, A. Maresque aîné 1881).

<sup>281</sup> *Id.* at X-XI. Dubois thought that even they did not always sufficiently distinguish with sufficient care between a reading and a conjecture to fill a *lacuna*.

<sup>282</sup> *Id.* at XVI-XVII. Dubois is drawing a comparison with a Dutch edition.

Muirhead's second major work came in 1886, his *Historical Introduction to the Private Law of Rome*. This had originated in a commission to write the entry on Roman law for the ninth edition of the *Encyclopaedia Britannica* to be published in 1886.<sup>283</sup> As Muirhead's original account was too long, a condensed version appeared in the *Britannica*, while his lengthy manuscript was published as an independent book. Goudy's rival for the Oxford chair, Moyle, commented on Muirhead's book that "[e]very page ... is written with reference to the latest continental contributions," adding that Muirhead deserved congratulation on the discrimination he exercised in use of such literature by choosing the good and rejecting the bad "from works so learned and yet in parts so fanciful as those (e.g.) of Voigt, of Kuntze, and (in a less degree) of Jhering."<sup>284</sup>

The *Historical Introduction* was reviewed at some length by Gabriel Bourcart in the *Nouvelle revue historique de droit français et étranger*.<sup>285</sup> Bourcart prefaced his review with the passage from the edition of Gaius by his late colleague, Dubois, quoted in translation above. He explained that he did so because:

[I]t was this careful, patient, and painstaking work of research and of close examination of the texts themselves, above all of the text of Gaius, that seem[ed] to [him] to be one of the most favourable circumstances for undertaking a work such this one, and one of the most certain indicators of its having real value.

While all modern jurists were aware of the value of history, he continued, the question was of how "to combine with a historical sentiment this punctilious

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<sup>283</sup> JAMES MUIRHEAD, *HISTORICAL INTRODUCTION TO THE PRIVATE LAW OF ROME*, [v] (Edinburgh, Adam and Charles Black 1886).

<sup>284</sup> J.B. M[oyle], Book Review, 3 L.Q. REV. 74, 74 (1887) (reviewing *HISTORICAL INTRODUCTION*, *supra* note 283).

<sup>285</sup> Gabriel Bourcart, Book Review, 12 NOUVELLE REVUE HISTORIQUE DE DROIT FRANÇAIS ET ÉTRANGER 840 (1888) (reviewing *HISTORICAL INTRODUCTION*, *supra* note 283).

preparation, involving meticulous attention to small detail.” Muirhead’s book possessed these qualities. Bourcart introduced his more detailed examination by commenting that the book contained bold conjectures, but that these were always strongly supported by textual evidence.<sup>286</sup>

Bourcart commented that the merit of the work had been quickly recognised: publication of a French translation was well advanced, and an Italian translation had already appeared.<sup>287</sup> The latter had been published earlier in 1888 as *Storia del diritto romano dalle origini a Giustiniano*, translated by Luigi Gaddi, who also added notes.<sup>288</sup> Pietro Cogliolo, then a noted Professor at Modena, provided a preface in which he discussed the regular teaching of the history of Roman law in Italy. He commented that, when he had read Muirhead’s *History* in English the year before, he had judged the work to expound Roman law as a true history. It had set out a line of historical development that one could follow, while the thinking of the author prompted reflection. It was instructive and never boring.<sup>289</sup> Cogliolo had already provided notes for the new edition of Guido Padelletti’s *Storia del diritto romano. Manuale ad uso delle scuole* published in Florence in 1886.<sup>290</sup> He later cited Muirhead a number of times in his own, two-volume, *Storia del diritto romano (dalle origini all’ Impero)*.<sup>291</sup> According to Professor Giuseppe Carle of Turin, Gaddi’s translation of Muirhead was adopted as a textbook by some of the Italian universities.<sup>292</sup> His thinking and approach were becoming embedded in the Italian literature. The French translation of Muirhead’s *History* by Gabriel Bourcart appeared

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<sup>286</sup> *Id.* at 841.

<sup>287</sup> *Id.* at 843.

<sup>288</sup> GIACOMO MUIRHEAD, *STORIA DEL DIRITTO ROMANO DALLE ORIGINI A GIUSTINIANO* (Luigi Gaddi trans., Milan, Leonardo Vallardi 1888).

<sup>289</sup> *Id.* at [V]-VII.

<sup>290</sup> GUIDO PADELLETTI, *STORIA DEL DIRITTO ROMANO. MANUALE AD USO DELLE SCUOLE* (Florence, Camelli 1886).

<sup>291</sup> See, e.g., 1 PIETRO COGLIOLO, *STORIA DEL DIRITTO ROMANO (DALLE ORIGINI ALL’ IMPERO)* 68, 83, 205, etc. (Florence, G. Barbèra 1896).

<sup>292</sup> Giuseppe Carle, *Professor Muirhead II*, 2 JURID. REV. 32, 33 (1890).

in 1889, shortly after the author's death.<sup>293</sup> Goudy reviewed the translation favorably, noting Bourcart's updating of Muirhead's references, adding references to more recent work, such as that of Padelletti and of Cogliolo.<sup>294</sup> No less an authority than Girard cited it as a work of reference, particularly for the information it provided on foreign works.<sup>295</sup>

As well as this extended life in continental translations adapted for French and Italian use, the work reached a second English-language edition, updated and edited by Goudy, published in London in 1899.<sup>296</sup> There was to be no equivalent book in the English language until H.F. Jolowicz (1890-1954) published his *Historical Introduction to the Study of Roman Law* in 1932.<sup>297</sup> Jolowicz's was in some ways a rather different book, however, and designed to be used with new textbooks such as that of Buckland;<sup>298</sup> moreover, by the 1930s, Muirhead's *Historical Introduction* was becoming obsolete both in content and approach. Muirhead's distinguished pupil, F.P. Walton (1858-1948), as Dean of the Faculty of Law and Professor of Roman Law at McGill University in Montreal, had published a much shorter *Historical Introduction to the Roman Law* in 1903;<sup>299</sup> it did not aim to compete.<sup>300</sup> Thus, in 1916 Alexander Grant produced a third edition of Muirhead's work, published in London in 1916.<sup>301</sup>

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<sup>293</sup> JAMES MUIRHEAD, *INTRODUCTION HISTORIQUE AU DROIT PRIVÉ DE ROME* (Gabriel Bourcart trans., Paris, A. Durand & Pedone Lauriel 1889). A presentation copy from the translator is in Edinburgh University Law Library.

<sup>294</sup> H[enry] G[oudy], Book Review, 2 JURID. REV. 87 (1890) (reviewing *INTRODUCTION HISTORIQUE*, *supra* note 293).

<sup>295</sup> P.F. GIRARD, *MANUEL ÉLÉMENTAIRE DE DROIT ROMAIN XIV* (4<sup>th</sup> ed. 1906).

<sup>296</sup> MUIRHEAD, *supra* note 185.

<sup>297</sup> H.F. JOLOWICZ, *HISTORICAL INTRODUCTION TO THE STUDY OF ROMAN LAW* (1932).

<sup>298</sup> *Id.* at [xv]-xvi; W.W. BUCKLAND, *TEXTBOOK OF ROMAN LAW FROM AUGUSTUS TO JUSTINIAN* (2<sup>nd</sup> ed., 1932).

<sup>299</sup> F.P. WALTON, *HISTORICAL INTRODUCTION TO THE ROMAN LAW* (1903).

<sup>300</sup> *Id.* at vi.

<sup>301</sup> JAMES MUIRHEAD, *HISTORICAL INTRODUCTION TO THE PRIVATE LAW OF ROME* (3<sup>rd</sup> ed. by Alexander Grant, London, Adam & Charles Black Ltd. 1916). Grant was a Q.C., sometime Fellow of All Souls, and former Lecturer in Law at the University of Manchester.

Muirhead now seems a minor figure; but he was well known in his own day. In the review of the French translation of his *Historical Introduction* in the *Recueil general des lois et des arrêts*, he was described as the “the famous Edinburgh professor;”<sup>302</sup> his French obituary, alluding to his time as an advocate depute, remarked that the “renown he had acquired in Scotland as a public servant, was not, however, comparable to the reputation he was starting to enjoy as a scholar of Roman law.”<sup>303</sup> In 1887 the distinguished German commercial lawyer and politician, Levin Goldschmidt, described him as the “excellent Edinburgh Law Professor” who had produced “systematic and useful work” under the influence of the “German School.”<sup>304</sup> He was the only British scholar Goldschmidt so rated. Two years later, Muirhead became a corresponding member of the Berliner Juristischer Verein;<sup>305</sup> he had already accepted honorary membership of the Istituto di diritto Romano in Rome in 1888, along with Windscheid and Jhering, among other famous names.<sup>306</sup> His Italian obituary noted that he was carefully chosen for election among the first honorary members of the Istituto, being “the best British representative of the modern study of Roman law.”<sup>307</sup>

One of Muirhead’s Scottish obituarists remarked that, as Professor of Civil Law, his “reputation [was] more European than British.”<sup>308</sup> At this remove, it is difficult to assess such a judgement. He was considered an excellent teacher, however, and Rankine stressed the excellence and popularity of his classes, in which

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<sup>302</sup> *Bulletin bibliographique*, RECUEIL GÉNÉRAL DES LOIS ET DES ARRÊTS ... FONDÉ PAR J.-B. SIREY 4, 4 (1891).

<sup>303</sup> Gabriel Boucart, *M. Muirhead*, 13 NOUVELLE REVUE HISTORIQUE DE DROIT FRANÇAIS ET ÉTRANGER 787, 787 (1889).

<sup>304</sup> LEVIN GOLDSCHMIDT, RECHTSSTUDIUM UND PRÜFUNGSORDNUNG: EIN BEITRAG ZUR PREUBISCHEN UND DEUTSCHEN RECHTSGESCHICHTE, 279 (Stuttgart, Ferdinand Enke 1887).

<sup>305</sup> ANDREAS FIJAL, DIE GESCHICHTE DER JURISTEN GESELLSCHAFT ZU BERLIN IN DEN JAHREN 1859 BIS 1933, 223 (1991).

<sup>306</sup> *Sunto dei verbali delli riunioni dell’istituto, riunioni del 3 novembre*, 1 BULLETTINO DEL ISTITUTO DI DIRITTO ROMANO 259, 259 (1888).

<sup>307</sup> *James Muirhead*, 2 BULLETTINO DEL ISTITUTO DI DIRITTO ROMANO 315 (1889).

<sup>308</sup> *The Late Professor Muirhead*, 33 J. JURISPRUDENCE 639, 640 (1889).



his enthusiasm kindled “not over a barren logomachy, but when the gradual development of some important institute was being traced through long eras of Roman history.”<sup>309</sup> He was described as rendering his class “perhaps the most interesting of the legal curriculum.”<sup>310</sup> It was to Muirhead that Sir Frederick Pollock turned to discuss points of law and textual problems in the Digest title *de lege Aquilia* when he was working on his famous book on torts.<sup>311</sup>

When Goudy wrote of his teacher’s devoting himself “with unremitting toil to the study and exposition of Roman law” and thereby doing “more probably than anyone last century to raise the standard of legal scholarship in this country,” he would have been conscious that he had now lived longer than Muirhead, but had produced in comparison much less scholarship in the discipline they both professed.<sup>312</sup> In the eyes of the world, he achieved greater public prominence with his chair at Oxford, his presidency of the S.P.T.L., his position as an associate of the *Institut de Droit International*, and his election as an Honorary Benchers of Gray’s Inn.<sup>313</sup> He used and continued to use his position to good effect to forward his discipline – Lenel recalled him as very welcoming to foreign lawyers;<sup>314</sup> he chaired one of the important lectures on “The Law of the Twelve Tables” given by Girard at University College, London, in 1914.<sup>315</sup> But he must have been conscious that he had not contributed in the way Muirhead had, nor had gained such international recognition for his scholarship as his teacher had been starting to acquire before his early death.

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<sup>309</sup> John Rankine, *Professor Muirhead*, 2 JURID. REV. 27, 29 (1890).

<sup>310</sup> *Late Professor Muirhead*, *supra* note 308, at 640.

<sup>311</sup> Cairns, *supra* note 40, at 875-76.

<sup>312</sup> Goudy, *supra* note 36, at 314-15.

<sup>313</sup> *New Honorary Benchers of Gray’s Inn*, THE TIMES, June 8, 1917, at 8.

<sup>314</sup> LAWSON, *supra* note 113, at 83.

<sup>315</sup> *University Intelligence. Advanced Lectures in Law*, THE TIMES, May 1, 1913, at 4.

To a man with Goudy's sense of responsibility and duty, with his sense of rectitude and propriety, this can only have impressed on him even more the need to defend his master's work against the fraud he saw committed by Hannis Taylor. Muirhead had worked hard to be a scholar and to achieve what he had done, only to die as he started to harvest the international reputation he deserved. For a pushy and ignorant plagiarist to appropriate Muirhead's work and get praise and recognition for it must have been very hard to bear – hence Goudy's desire to ensure that it was clear beyond a peradventure that Taylor was publishing Muirhead's work as his own. The aftermath made it clear that he had succeeded in vindicating Muirhead's scholarship from Taylor's claims; but there was a personal cost.

## V. THE AFTERMATH

No doubt it took a while for the January 1909 issue of the *Juridical Review* to reach the U.S.A. Indeed, it was in the same month that the reviewer who scorned Taylor's discussion of his "discovery" of Webster's pamphlet, nonetheless cautiously praised his account of the history of Roman law and English law.<sup>316</sup> Another reviewer characterized it as "not sufficiently systematic, complete, or accurate to serve the purpose of an elementary treatise on jurisprudence," but praised the chapter on "External History of Roman Law" on which Goudy had focussed, suggesting it could have been expanded with benefit.<sup>317</sup>

On January 27, 1909, however, the *Evening Star*, a leading Washington newspaper, reported Goudy's article in the *Juridical Review* as charging Taylor with "gross plagiarism." The journalist, W.E. Curtis, under a series of headlines that

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<sup>316</sup> J.H.D., *supra* note 25, at 282-83.

<sup>317</sup> E.F., Book Review, 14 AM. HIST. REV. 329, 330-31 (1909) (reviewing THE SCIENCE OF JURISPRUDENCE, *supra* note 19).

provided a précis of his report, described Taylor as “one of the highest authorities on constitutional and international law in the United States,” and listed his various distinctions and works, before commenting: “His reputation is international, and, therefore, when it is attacked it becomes a matter of national concern.” He recounted Goudy’s article at considerable length, with extensive quotation from his damning review, including the parallel columns that demonstrated Taylor’s plagiarism of Bryce, still British Ambassador to the U.S.A., before quoting Goudy’s remark that Taylor “[a]pparently ... has been diffident of his own powers of contribution.” Curtis also remarked that Goudy indulged “in some sarcasm at the expense of Ambassador Bryce,” by remarking he would “not relish his sentences being appropriated in this way.” In contrast to Goudy’s obvious sarcasm at the expense of Taylor, this comment is odd, perhaps reflecting the newspaper’s or journalist’s own attitude to the British Ambassador. Curtis had also supplied his report to the *Chicago Record Herald*, ensuring further circulation of Goudy’s allegations.<sup>318</sup>

Taylor had to respond to something as strong as this appearing in what was now his home city, and the newspaper published his reply the next day.<sup>319</sup> This started with an account of the praise his book had received from Rudolph Sohm and Ludwig Mitteis (1859-1921), both currently professors at Leipzig. (He referred to the latter as “Dr. von L. Mitteis,” presumably having copied his name from a German book, not realizing that in the context the “von” simply meant “by” and was not part of Mitteis’ name. Taylor was consistently to name Mitteis in this way, and no one seems ever to

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<sup>318</sup> *Grave Charge Made. Hannis Taylor Accused of Plagiarism. Latest Work is Quoted. Dr. Goudy of Oxford University Compares Book with Muirhead’s. Wholesale Filching Alleged. Declares that Bounds of Legitimate Appropriation have been Passed in Chapter on Roman Law*, EVENING STAR, Jan. 27, 1909, at 13.

<sup>319</sup> *Letter from Hannis Taylor to the Editor (n. d.), Mr. Taylor Replies. Meets Dr. Goudy’s Charge of Plagiarism. Denies Literary Theft. Warm Commendations of His Volume Quoted. Full Credit was Given. Author Prefers to Wait Until James Bryce Himself Complains of His Use of Text*, EVENING STAR, Jan. 28, 1909, at 4.

have corrected.) He also referred to approving comments from Judge Shackelford Miller (1856-1924) of Louisville, Kentucky, Dean of the (evening) Jefferson School of Law there, and Professor John Westlake (1828-1913), Whewell Professor of International Law at Cambridge.<sup>320</sup> Taylor wrote:

All this praise of an American discovery of a new thought in the history of Roman law (the best of it coming from German sources) was too much for the self-constituted Oxford guardian of that subject. The worst form of literary jealousy has prompted him to attempt to discredit my book as a whole, despite the fact that he frankly confesses that he has read only one chapter of it. Ignoring the discovery I have made, he charges that I have not given the proper credit to four or five authors as to the general details of the history of Roman law which are the common property of everybody.

He added: “Dr. Goudy has never been able to write a book of his own, but he has added some notes, very good notes, to the well known work of Muirhead.” Taylor stated that the claim was that he had used the work of Sohm, Bryce, Muirhead and A.H.J. Greenidge without adequate acknowledgement. He commented that, if he had gone “‘beyond the bounds of legitimacy’ in drawing from Dr Sohm, is it at all likely that he would have given the work his cordial congratulations after a critical examination of it? He does not need the Oxford professor as his guardian.” (He did not mention that the accusation was in respect of the English translation by Ledlie.) Turning to the allegations about his use of Bryce’s work, Taylor again claimed that he had made adequate acknowledgement, adding that “[u]ntil Mr. Bryce complains of my digging in that quarry, has the Oxford professor the right to constitute himself his

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<sup>320</sup> *Id.* On these individuals, see: [http://www.uni-leipzig.de/unigeschichte/professorenkatalog/leipzig/Mitteis\\_102/](http://www.uni-leipzig.de/unigeschichte/professorenkatalog/leipzig/Mitteis_102/) (last accessed Apr. 28, 1915); B.L. Amster, *Jefferson School of Law*, in THE ENCYCLOPEDIA OF LOUISVILLE 441 (J.E. Kleber ed. 2001); Norman Bentwich, *John Westlake, K.C.*, 29 L. Q. REV. 260 (1913). Sohm is discussed above, see *supra* note 40.

guardian?” He also claimed he had cited Muirhead and Greenidge appropriately. Goudy’s “injustice” was inspired by a “spiteful spirit”. On the other hand, for thirty years scholars in the British Isles had praised his (Taylor’s) work. He pointed to the award to him of the degree of LL.D. by the Universities of Dublin and Edinburgh, and quoted the speech made by Sir Ludovic J. Grant, Dean of the Faculty of Law, in presenting him for the degree in Edinburgh. He referred once more to the “the malice of one who resents my intrusion into a field which he considers all his own, but to which he has never contributed a single new idea.”<sup>321</sup>

Following Curtis’s article and Taylor’s reply, the discussion started to change in the legal periodicals in the U.S.A., although Taylor himself restated his main ideas in February in the *Harvard Law Review*.<sup>322</sup> In the same month, Walter F. Dodd (1880-1960), a distinguished political scientist and constitutional theorist, reviewed Taylor’s *Science of Jurisprudence* in *The American Political Science Review*. Dodd was sceptical about Taylor’s “big claim,” suggesting there was nothing really new in it, and that his claims about the influence of Roman law and English constitutional practice were statements of the commonplace.<sup>323</sup> Still at the start of his career, Dodd had been in charge of the foreign law section of the Library of Congress until 1907, and held an appointment at Johns Hopkins.<sup>324</sup> He was well placed to assess Taylor’s book, which he judged to be “an unsatisfactory type of legal history, based upon insufficient investigation and displaying in many respects an ignorance of important legal literature.” This meant it could not “be ranked as an important or original

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<sup>321</sup> Letter from Hannis Taylor to the Editor (n. d.), *EVENING STAR*, Jan. 28, 1909, at 4.

<sup>322</sup> Hannis Taylor, *The Science of Jurisprudence*, 22 *HARV. L. REV.* 241 (1909).

<sup>323</sup> W.F. Dodd, Book Review, 3 *AM. POL. SCI. REV.* 122, 122 (1909) (reviewing *THE SCIENCE OF JURISPRUDENCE*, *supra* note 19).

<sup>324</sup> See J.R. VILE, *ENCYCLOPEDIA OF CONSTITUTIONAL AMENDMENTS, PROPOSED AMENDMENTS, AND AMENDING ISSUES, 1789-2002*, 142-43 (2003).

contribution to the subject of which it treats.”<sup>325</sup> He hinted at the plagiarism exposed by Goudy: a “careful reading of Taylor together with” specified pages of Muirhead’s and Sohm’s works “will indicate something of Dr. Taylor’s indebtedness to these authors.” He added:

The notes and references to Roman legal literature not in English lend a counterfeit appearance of erudition to this portion of the work, but it may be of interest to call attention to the fact that many of Dr. Taylor’s notes of this character are identical with notes in Sohm, Muirhead, and in Greenidge’s *Roman Public Life*. The author shows little first-hand familiarity with the literature other than that in English.<sup>326</sup>

The chapter on the “External History of English Law” was “fairly well done.” That on English law in the United States was written to exploit “the author’s views with reference to Pelatiah Webster. ... A fuller knowledge of the literature ... and a closer study ... would probably have caused a revision of the somewhat absurd claims.” Dodd noted that portions of the chapter discussing Latin America and what would now be called “mixed systems” were copied from Rodriguez’s *American Constitutions* and Nathan’s *Common Law of South Africa*. He also commented that Taylor’s indebtedness to Holland was “certainly in places great enough to be acknowledged by the use of quotation marks.” Finally: “Dr. Taylor cannot be said to have made any important contribution either to historical or to analytical jurisprudence.”<sup>327</sup>

Also in February, the *Yale Law Journal* carried a favourable review by “E.B.G.” The reviewer remarked that Taylor had “made abundant use of the work of

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<sup>325</sup> Dodd, *supra* note 323, at 123.

<sup>326</sup> *Id.* at 123.

<sup>327</sup> *Id.* at 124-25.

the leading writers on the history and theory of law, for which full credit is given by quotation and reference.” The reviewer remarked:

The theories advanced, and frequently even the phraseology used, are familiar to students of Maine, Bryce, Pollock, and Holland. ... Dr. Taylor had made an important contribution to legal literature and has rendered a distinct service to the student in combining the essentials of his subject within a single volume, and at the same time by reference, making the volume a key to the works of the modern jurists. ... The book is cordially commended to students of jurisprudence.<sup>328</sup>

While to the modern mind this could be read as ironic; it was probably an attempt by an associate to carry out damage limitation, by suggesting that those who criticised Taylor on these grounds were exaggerating the problems through prejudice and bile. The author has accepted Taylor’s defence of his book in the *Evening Star*. It may be significant that Taylor had recently published two articles in the *Yale Law Journal*.<sup>329</sup>

In an editorial in the *Illinois Law Review* in March, Roscoe Pound in turn now addressed the issue of Taylor’s plagiarism, though he never used the term, not even in citing Goudy’s article (the title of which he did not even quote), which he stated that he saw only after writing his own critique. He commented that Goudy had shown that the chapter “on the external history of Roman law is made up of a mosaic” from the work of Muirhead, Ledlie (who translated Sohm), and Bryce.<sup>330</sup> No doubt Pound wished to minimize the risk of suit. Instead, Pound cited from Justinian’s *Institutes* the passages on *specificatio*, whereby one could become owner of a thing one had

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<sup>328</sup> E.B.G., Book Review, 18 YALE L.J. 290, 290-91, 291-292 (1909) (reviewing THE SCIENCE OF JURISPRUDENCE, *supra* note 19).

<sup>329</sup> Hannis Taylor, *Pelatih Webster: The Architect of our Federal Constitution*, 17 YALE L.J. 73 (1907); Hannis Taylor, *A Bancroftian Invention*, 18 YALE L.J. 75 (1908).

<sup>330</sup> R[oscoe] P[ound], *Editorial Notes. Taylor’s Science of Jurisprudence-A Literary Application of the Doctrine of Accession*, 3 ILL. L. REV. 525, 531-32 (1909).

made, even if some of the materials had belonged to another. He followed this with the text on ownership of an object made entirely from the materials of another, in which the *media sententia* is expressed, namely that, if it can be reconverted into its component materials, the original owner remains owner. He pointed out that this text, “applicable to the case ... renders [Taylor’s] title legally – leaving all moral questions out of sight – a very poor one.” He then further develops this literary conceit, rather damningly remarking that he will apply this Roman-law test to the book, as “we cannot think that the test of the American cases, namely comparative value of the original materials and the new product, would be regarded as fair by the learned author.”<sup>331</sup> Pound then demonstrated, in parallel columns, Taylor’s copying from, among other works, Holland’s *Elements of Jurisprudence* and the first edition of Howe’s *Studies in the Civil Law*, while commenting on the references – or lack of them – to the authors.<sup>332</sup> In one footnote, he pointed out that, on one page, copying Holland, Taylor had described a “right” as a “power or capacity,” while on the previous page, he had defined a “right” as “an interest,” seemingly unaware of the contradiction and the academic controversy surrounding the different approaches.<sup>333</sup> This telling observation indicates Taylor’s lack of intellectual engagement with the material and his thoughtless appropriation.

Pound avoided the term “plagiarism;” he made the same damning point as Goudy, however, but in a clever and even amusing way that avoided the Ulsterman’s directness, perhaps even playing on the idea of *emblemata Triboniani*. Pound was astute in this. He was Dean of the Law School of Northwestern University in Chicago; he was not yet ensconced within the heart of the American establishment as

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<sup>331</sup> *Id.* at 525-26.

<sup>332</sup> *Id.* at 526-31.

<sup>333</sup> *Id.* at 527 n. 3.



Dean of the Harvard Law School. One suspects that he wished to be intellectually honest, but did not wish to upset too much a man linked with many powerful people in the U.S.A. He may have been wary of using the term “plagiarism” of the work of a man close to the Republican establishment in Washington.

In March, with the aim of further protecting his reputation, Taylor initiated a correspondence in *The Times* with a lengthy letter of two and a half columns, given the heading “The Science of Jurisprudence. Dr. Hannis Taylor and Dr. Goudy.” In it, Taylor developed and elaborated the themes already found in his letter to the *Washington Evening Star*.<sup>334</sup> His main lines of defence may be summed up as: a claim of the importance and originality of the idea underlying the book; a personal attack on Goudy; an emphasis on the support he supposedly had of important men; and a stress on his own importance along with the recognition he had gained.<sup>335</sup> In fact his letter is an outrageous, offensive, and wonderfully perverse rhetorical *tour de force*.

He stated that Goudy, “supposed to be an expert in Roman law,” had made “a deliberate and artful concealment” of the thesis of the relevant chapter, and had made “a spiteful and ridiculous attempt to prove that authorities that have been cited with all proper frequency ... ought to have been cited oftener still.” He is claiming that the supposed originality of his thesis was what counted. He referred to Goudy’s letter to him stating that he was going to denounce him for plagiarizing Muirhead and Greenidge, commenting:

When further examination revealed the fact that there was really no complaint to be made, so far as they were concerned, the scene widened with Dr.

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<sup>334</sup> Letter from Hannis Taylor to the Editor (n. d.), *EVENING STAR*, Jan. 28, 1909, at 4.

<sup>335</sup> Letter from Hannis Taylor to the Editor (n. d.), *THE TIMES*, Mar. 11, 1909, at 19.

Goudy's resolve to add Dr. Rudolph Sohm, Mr. Bryce, and Dr. Grueber to the list of those for whom he has undertaken to stand as self-constituted guardian. Taylor next said that he had sent his manuscript to Bryce, whom, he said, returned it with the observation that "the matter, as stated by me, was entirely new to him." Forwarding it to Holland with Bryce's comments, he received the comment from the latter that he was "struck with the truth and originality of what you say." Taylor wrote that he had next sent it to Rudolph Sohm and Ludwig Mitteis, "the greatest Romanists of Germany," who replied "with a frankness and generosity Dr. Goudy could never understand." He quoted their comments, pointing out that Sohm had suggested some qualifications that he was able to tell him were made in the body of the book (thereby incidentally further confirming that he had not sent the whole text to those from whom he solicited approving comments). Because his thesis, so he said, was particularly relevant for the Latin-American world, he also approached the Brazilian jurist and Ambassador to the U.S.A., the famous Joaquim Nabuco (1849-1910), whose answer praising Taylor's novelty, he also quoted, as he did that of Professor Westlake of Cambridge and Judge Shackelford Miller, Dean of the Jefferson School of Law. Goudy's "bitter article" never mentioned the novel thesis praised by these men; instead, wrote Taylor, he complained that phrases were borrowed when he dealt with the most commonplace issues of Roman law. He suggested that this was the product of the "bitter professional jealousy" of one who "has never been able to make a book of his own," and who "has only been able to contribute a few notes to a very worthy book of another person." Goudy's remark that Taylor had reproduced slips in Muirhead's work that he had noted for correction is transformed in the letter to *The Times* into an admission that the book is unreliable, because Goudy had failed to correct it, with Taylor commenting: "That is a damaging confession." Goudy's

“passionate, prejudiced mind” was “incapable of the critical function,” he has defamed a book he has admitted that “he has never read.” Taylor next put the rhetorical question: “After thus laying bare his critical incapacity as to large things, am I really called upon to consider the pitiful technical details as to phrases and citations concerning which he makes such a to-do?” He pointed out that Sohm had read his book and found no copying of his work: “Spiteful professional jealousy finds no place in a great mind like his.” Bryce had received a copy and not complained. Turning to Muirhead and Greenidge, Taylor stated he had cited them by name “more than 20 times” as well as in the list of authorities. He quoted an instance of his citing Goudy himself. He added would he have sent a copy to Goudy had he imagined there might be such an objection? He pointed out he had received honorary degrees from Dublin and Edinburgh, quoting the laureation address from the latter. Goudy had ignored this:

Can a mind so envenomed, so devoid of all sense of justice, be said to be a normal one? But, when its possessor is happens to be the “Regius professor of Civil Law at Oxford” he has the power to inflict pain and injury, no matter how foundationless or wanton his accusations may be.<sup>336</sup>

In its own way, this rhetorical letter is rather wonderful with its bullying, bluster, and blatantly *ad hominem* attack; but it is also quite irrelevant and ignores the specific charges made. The strategy of pointing out that Bryce and Sohm had seen the work, but had made no complaint was a clever one, even if he necessarily disclosed that he had sent them only the preface (though he also claimed to have sent the whole work to Sohm). But with the letter’s parade of distinguished endorsers of his work, to which he had now added Nabuco, best known as a historian, abolitionist, and

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<sup>336</sup> *Id.*

statesman (before becoming Ambassador in Washington, he had previously been Minister Plenipotentiary in London), Taylor must have hoped he would persuade readers and intimidate Goudy.<sup>337</sup> If so, he was mistaken in the latter hope. The letter gained approval in the U.S.A., though, which perhaps mattered more to Taylor. It was reprinted in the *Washington Herald* under the heading “Dr. Henry Goudy Scored by Hon. Hannis Taylor,” with the subheading: “Famous Jurists pay High Tribute to American’s Discovery as to the World-Wide Fusion That Is Now Going on Between Roman and English Law.”<sup>338</sup>

Two days after this letter was published, Holland wrote to *The Times* from Oxford, expressing surprise that he was listed by Taylor as having congratulated him on his book, and as one of those “against whom ... my friend Dr. Goudy ‘stands alone.’” He stated that the passage cited from a private letter had reference not to the completed book, but to a draft of the preface. He had never read the book itself. He pointed out: “The question of the soundness, or otherwise, of any generalization put forward in the book has obviously nothing to do with the questions raised by Dr. Goudy’s criticism.”<sup>339</sup> (Holland certainly did read the book, perhaps later; as the next year, in the new edition of his *Elements of Jurisprudence*, which Pound had shown Taylor to have plagiarized, he cited it in a footnote thus: “Wright v. Sill, 2 Black, 544, cited by Hannis Taylor, *The Science of Jurisprudence*, p. 511.”<sup>340</sup> One wonders if his punctilious courtesy is intended to demonstrate appropriate scholarly

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<sup>337</sup> CAROLINA NABUCO, *LIFE OF JOAQUIM NABUCO* (Ronald Hilton trans. and ed., 1950). Like Taylor, Nabuco had been involved in boundary disputes, in his case over that between Brazil and British Guiana. There is a growing modern literature on him.

<sup>338</sup> *Dr. Henry Goudy Scored by Hon. Hannis Taylor*, WASHINGTON HERALD, Mar. 21, 1909, at 7.

<sup>339</sup> Letter from T.E. Holland to the Editor (Mar. 13, 1909), *Dr. Hannis Taylor and Dr. Goudy*, THE TIMES, Mar. 15, 1909, at 4.

<sup>340</sup> T.E. HOLLAND, *THE ELEMENTS OF JURISPRUDENCE*, 70 n. 1 (11<sup>th</sup> ed. 1910).

acknowledgement of a source, while also being a rather pointed joke, one for the *cognoscenti*.)<sup>341</sup>

On March 17, *The Times* – along with a Leader on the issue – published letters (under the heading “Dr. Hannis Taylor and Dr. Goudy”) by Goudy, Dicey, and Paul Vinogradoff. Dicey commented that Goudy had provided *prima facie* proof of his charges in his article in the *Juridical Review*. He concluded: “It is not the originality or the truth of his theories, but his character which is at stake. The charge of plagiarism cannot be disposed of by the plagiarist’s assertion that he is an original thinker.”<sup>342</sup> Vinogradoff (1854-1925), Corpus Professor of Jurisprudence at Oxford, pointed out that quotations of praise from distinguished scholars did not refute Goudy’s allegations. He added that Taylor’s supposed great idea was a mere truism “used with gross exaggeration,” so that it became misleading.<sup>343</sup> Goudy’s reply was relatively lengthy, and measured in tone. He denied possessing any animus against Americans working in Roman law, pointing out he was the grand-nephew of Alexander Porter. He repeated again that neither Muirhead nor Greenidge could defend the appropriation of their literary property, and that he needed to defend their interests: “I should have been a despicable coward and veriest poltroon if I had remained silent.” Why should another get the credit for their work? He denied that Taylor had given sufficient acknowledgement to Muirhead and Greenidge, stating he had “marked over 100 passages that have been taken almost verbatim from Muirhead’s book, and in only one instance has specific acknowledgement of indebtedness been given.” He could only identify eight references to Muirhead’s

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<sup>341</sup> It was mentioned without comment by a reviewer: C.H. McL., Book Review, 24 HARV. L. REV. 248, 248 (1911) (reviewing HOLLAND, *supra* note 340). Was the reviewer also making a point?

<sup>342</sup> Letter from A.V. Dicey to the Editor (n. d.), THE TIMES, Mar. 17, 1909, at 22.

<sup>343</sup> Letter from Paul Vinogradoff to the Editor (Mar. 14, 1909), THE TIMES, Mar. 17, 1909, at 22; Peter Stein, *Vinogradoff, Sir Paul Gavrilovitch (1854–1925)*, in OXFORD DICTIONARY NAT’L BIOGRAPHY, <http://www.oxforddnb.com/view/article/36664> (last visited May 28, 2015) (subscription required).

book. Further, it was obvious that Taylor had never looked at “the great mass” of the authorities cited: he demonstrated this with another example of a nonsensical reference. Turning to Taylor’s complaint that he had not read the whole book, Goudy now stated that he had read further chapters, and had “found in these exactly the same methods of plagiarism.” He now provided an example with parallel passages from the history of English law. He dismissed Taylor’s “alleged remarkable discovery.” Finally, he said that if necessary he was happy to stand alone; but he pointed out that Professor Dicey had approved his review before it was printed.<sup>344</sup> The Leader noted that the charges against Taylor were precise, but that he had failed to answer them with the appropriate precision. The issue of his “entirely new contribution” was irrelevant. The question was: “Did Dr Taylor appropriate without due acknowledgement the work of other men?” It added: “No one who is acquainted with Dr. Goudy, or who reads his explanation of the reasons which urged him to move in the matter, would think of attributing to him any motive but sense of duty, even if he were mistaken.”<sup>345</sup> Goudy’s former Edinburgh colleague, Rankine, wrote to *The Times* on 17 March, commenting that, “[a]mong many astonishing statements made by Dr. Hannis Taylor in his letter,” was the assertion that Goudy had never written a book of his own. Rankine pointed to his *Treatise on Bankruptcy*, now in a third edition.<sup>346</sup> In the *Juridical Review*, James Mackintosh provided a judicious summary of the debate in *The Times* to this date, noting what he described as Taylor’s “plentiful use of the arts of the special pleader to shirk the plain issue and to bluff the uninformed public that he is a much maligned person.” He was also concerned to

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<sup>344</sup> Letter from Henry Goudy to the Editor (Mar. 13, 1909), THE TIMES, Mar. 17, 1909, at 22.

<sup>345</sup> *Leader: Professor Goudy and Dr. Taylor*, THE TIMES, Mar. 17, 1909, at 11.

<sup>346</sup> Letter from John Rankine to the Editor (Mar. 17, 1909), THE TIMES, Mar. 19, 1909, at 14.

explain why the University of Edinburgh had awarded the honorary degree of LL.D. to Taylor, as this issue raised a question about the wisdom of having done so.<sup>347</sup>

The day *The Times* published Goudy's letter demonstrating further plagiarism, *The New York Times* previewed its contents;<sup>348</sup> the very next day, on the basis of its special cable dispatch from London, it published an article headed: "Attacks on Taylor Astonish Capital." More ominously from Taylor's point of view, one of the sub-headings stated that "Taft May Make An Inquiry," the text commenting: "It is understood that the matter has been brought to the attention of President Taft, and that he may take some action in the matter of Dr. Taylor's connection with the Spanish Claims Commission," to which he was special counsel. The article then reproduced the parallel passages from Goudy's original article in which he showed that Taylor had copied Bryce. It also reported that "such serious charges against [Dr. Taylor] by such a prominent man as Prof. Goudy have amazed many persons in Washington."<sup>349</sup> Issues of politics and Taylor's career were now coming to the fore in the U.S.A.

Taylor wrote to the Editor on March 22. He referred to his letter to *The Times* of March 11, repeating his claim that Goudy's "silly and spiteful assault" on his book was prompted by his having made a "notable discovery in the history of Roman and English law, for which I am receiving congratulations from the greatest specialists in the world." He then set out the thesis of his book at some length, before remarking: "It is the old, old story over again. Whenever anybody discovers anything new, some sterile pedant, who never had a thought of his own, is on hand to denounce and defame him." He added that in the parallel passages from Bryce quoted in the

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<sup>347</sup> James Mackintosh, Note. *A New Apology for Plagiarism*, 21 JURID. REV. 178 (1909-10).

<sup>348</sup> *Goudy Again Assails Taylor. Reiterates Charges of Plagiarism Against American Author. Special Cable to the New York Times*, NEW YORK TIMES, Mar. 17, 1909, at 4.

<sup>349</sup> *Attacks on Taylor Astonish Capital. Ex-Minister Accused of plagiarism in His Book Had Received Many Honors. Taft May Make An Inquiry. Prof. Goudy Quotes passages from Taylor Which He Says, Were Taken from Bryce and Others*, THE NEW YORK TIMES, Mar. 18, 1909, at 6.

newspaper, Goudy had suppressed a footnote in which he gave adequate acknowledgement to Bryce, but added that “his pitiful performance” will only serve to further publicize “a far-reaching generalization whose importance is not yet generally understood.”<sup>350</sup>

Taylor now responded in two linked letters in *The Times*, the first published on April 10, the second on April 14. He again chose to attack Goudy’s character, stating that he had confessed that his “original attack ... was so obviously libellous” that only one person would publish it, while Taylor was now going to expose “a certain part of his conduct which puts directly in issue his moral integrity.” He again argued that in the quotation from his work in Goudy’s letter of 17 March, the professor had deliberately suppressed notes and falsified the quotations from Taylor’s work in order to make his point. He commented: “Is not such unprecedented conduct, deliberately designed to deceive, a grave and punishable offence against the moral dignity of the University of Oxford? Should it permit one of its members thus to make slander a fine art?” He also attacked Dicey and Vinogradoff, asking if they were now prepared “as character-witnesses, to give a clean bill of health to one who deliberately makes a charge of plagiarism while he artfully suppresses the evidence under his very eyes which proves the falsity of his charge?” He suggested Goudy had “placed himself under the ban of the maxim – *falsus in uno, falsus in omnibus*.” In the second letter, which developed the content of the first as regards supposed suppression of the acknowledgements he had made, he included a newspaper cutting, its source not revealed, but in fact taken from the *Washington Herald*, which stated that his book had been presented by Rodolphe Dareste, “the most famous living writer in historical

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<sup>350</sup> Letter from Hannis Taylor to the Editor (Mar. 22, 1909), NEW YORK TIMES, Mar. 23, 1909, at 8.



jurisprudence in France” in a public meeting of the Académie des Sciences Morale et Politiques:

Such recognition from the institute through M. Dareste is the highest France can give. The tributes heretofore recorded from Dr. Rudolph Sohm and Dr. von L. Mitteis, the most famous Romanists of Germany, brought to Mr.

Taylor the highest assurances that country could give.<sup>351</sup>

The absurd fashion in which Mitteis’s name is again rendered indicates that this item was probably given to the *Washington Herald* by Taylor, just as he had probably earlier prompted its reprint of his initial letter to *The Times*.

Comparison shows that Goudy did exclude as irrelevant some matter from the relevant passages; but his accusation of plagiarism was nonetheless correct, and what Taylor wrote in response was sufficiently misleading as effectively to be untrue. In a way, his second letter even confirmed the charge that he had copied his source and its footnote. Two days after the second letter, *The Times* published a letter from “A Corresponding Member of the French Institute,” who stated that he knew nothing of the dispute between Goudy and Taylor, but that “the American author has fallen into a misapprehension as to the degree to which his book has been ‘honoured by the Institute of France.’” He noted that the compliment is paid, not by the Institute, but by the member who presents the book; there was no implication of knowledge or appreciation of the contents of the book. It was a friendly compliment “such as is accorded to a hundred volumes every year.”<sup>352</sup>

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<sup>351</sup> Letter from Hannis Taylor to the Editor (n. d.), *Dr. Hannis Taylor and Professor Goudy*, THE TIMES, Apr. 10, 1909, at 2; Letter from Hannis Taylor to the Editor (n. d.), *Dr. Hannis Taylor and Dr. Goudy*, THE TIMES, Apr. 14, 1909, at 4; WASHINGTON HERALD, Apr. 1, 1909, at 2. Dareste is Rodolphe-Madeleine Cléophas Dareste de la Chavanne (1824-1911).

<sup>352</sup> Letter from A Corresponding Member of the French Institute to the Editor (Apr. 14, 1909), *Dr. Hannis Taylor and Dr. Goudy*, THE TIMES, Apr. 16, 1909, at 2.

Writing from Rome, Goudy pointed out that Taylor's response did not affect the matter and was highly misleading. He said Taylor could justify himself either by having the book put again in circulation in Britain so the holders of the copyrights could sue, or by suing Goudy for defamation: "But he will take neither course. His plagiarisms do not count by threes, but by hundreds." Finally, Goudy commented: "His personal abuse of myself leaves me undisturbed. He may throw dust thereby in the eyes of the general public, but the learned world will not be so deceived."<sup>353</sup> Once more the *New York Times* had an advance copy of this letter, reporting, on the same day as it was published in London, Goudy's challenges to Taylor (though, significantly, not the remark that "His plagiarisms ... count by hundreds.")<sup>354</sup> And there the correspondence in *The Times* ended.

Of course, by initiating this correspondence, Taylor had drawn further attention to Goudy's claims; he may have been unwise to do so. His publishers, the Macmillan Company of New York, reacted to the growing scandal, and, as Goudy had pointed out, by mid-April had withdrawn the book from circulation in the United Kingdom.<sup>355</sup>

The *New York Times* had obviously been fed copies of Goudy's letters by someone, one suspects, hostile to Taylor. The debate in *The Times* was paralleled across the Atlantic through April, though more favorably to Taylor. William Curtis, who had written the article on Goudy's review in January in the *Evening Star*, now returned to the fray, enjoying with his by-line, dated Mobile, Alabama, April 1, 1909, the designation, "Special correspondent to the Star and the Chicago Record Herald."

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<sup>353</sup> Letter from H. Goudy to the Editor (Apr. 16, 1909), *Dr. Hannis Taylor and Dr. Goudy*, THE TIMES, Apr. 22, 1909, at 19.

<sup>354</sup> *Goudy Challenges Taylor. Defies Him to Sue for Libel on Charges of Plagiarism*, NEW YORK TIMES, Apr. 22, 1909, at 1.

<sup>355</sup> Letter from Henry Goudy to the Editor (Apr. 16, 1909), *Dr. Hannis Taylor and Dr. Goudy*, THE TIMES, Apr. 22, 1909, at 19.

He reported *The Times*' Leader of March 17, with its suggestion that either Taylor's book should again be circulated in Britain, so that copyright holders could sue, or that Taylor should sue Goudy for defamation. Curtis recommended the latter action, partly on the (mistaken) ground that the book was published by MacMillan & Co. of Britain, so it must already be available and subject to suit. Curtis also reported the letters of Goudy, Holland, Dicey and Vinogradoff up to that date.<sup>356</sup> Two days later the newspaper published Taylor's response. This was a version of the letters published in *The Times* on April 10 and 14, claiming that Goudy had deliberately suppressed Taylor's citations in the new passages he had quoted in his letter of March 17. He mentioned that this was "a stupid and ghastly attempt defame," pointing out that, while his "assailant was thus destroying himself," his book was being honored "en Séance publique" by the Institute of France, the "spokesman" being Rudolphe Dareste, "one of the oldest members of the institute and one of the most famous jurists of France." He commented: "What action the university of Oxford will take as to one who has thus published a false copy of a printed record, with the intent to defame, remains to be seen."<sup>357</sup>

Taylor now further developed a campaign of vicious attacks on Goudy's character in America; if aware of these, the Ulsterman did not respond – in any case he may have thought that he had done enough to convince any unprejudiced reader. On April 18, the *Washington Herald* repeated a piece from the *Philadelphia Inquirer* that stated that Taylor's book had been received "with a hearty acclaim by students of

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<sup>356</sup> W.E. Curtis, *Calls it No Answer. London Times on Taylor's Reply to Goudy. Ethics of Appropriation. Discussing the Canons of Literary Honesty. What an Author May Take. Charges of Plagiarism in Preparing the Science of Jurisprudence Discussed by Writers*, EVENING STAR, April 3, 1909, at 3.

<sup>357</sup> Letter from Hannis Taylor to the Editor (n. d.), *Declares He Gave Credit. Hannis Taylor Says His Citations Were Suppressed. Asserts that Dr. Goudy Furnished a False Record in Presenting His Charges of Plagiarism*, EVENING STAR, April 5, 1909, at 7.

law the world over and resulted in degrees from many universities, including that of Edinburgh.”

This roused Dr. Goudy, of Oxford, who, without reading the book, made a general charge of plagiarism. Driven to produce specifications, he claimed, after a reading, that the author had not given credit to Bryce and others. When shown that this was not the case, he shifted his ground and reproduced in parallel columns what he claimed were excerpts from Dr. Taylor’s book and that of the original. This looked pretty bad for the American author, and the London Times, which had been made the vehicle for the controversy, seemed to think that a case had been made. Then Dr. Taylor showed that in assuming to make the excerpts his British critic had willfully [*sic*] cut short one passage and omitted all the foot-notes which gave the exact references whose omission had stirred them up. There the matter rests, and the Oxford scholar must now explain, if he can, how he came to mutilate the passages which he represented as veritable excerpts.

This muddled misleading account further wondered if there was any way for Goudy “to escape the imputations cast upon him.”<sup>358</sup>

Towards the end of April, the *Washington Herald* reported a story from the *Baltimore Sun* under the heading: “Dr. Goudy’s Retreat. Dr. Hannis Taylor’s Parting Shot at His Assailant in London Times.” The Baltimore paper had headed its piece “Truculent British Reviewer.” It stated that Taylor had “published a reply in The Times which seemed to dispose of Prof. Goudy’s charges and was hailed by his friends as a complete refutation of the Oxford professor’s allegations of plagiarism.” Goudy was accused of being “more savage than ever” in his final letter. It suggested

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<sup>358</sup> *A Study in Plagiarism. From the Philadelphia Inquirer*, WASHINGTON HERALD, Apr. 18, 1909, at 7.

that Taylor should pick up the gauntlet Goudy had thrown down and sue. Of course, this Taylor could not do. The *Washington Herald* column includes a letter from Taylor. It started by claiming he had “exposed” in *The Times* “the grave offence of which Dr. Goudy has been guilty in his effort to defame me.” He repeated that Goudy “mutilated two of my pages ... and then published in the Times what purported to be a copy of an extract from them, false in three vital particulars.” He then set out once more his allegations that Goudy had only achieved demonstration of plagiarism by amending Taylor’s texts to provide proof by suppressing his footnotes. Though this claim was nonsense, Taylor wrote:

Each one of these acts was a necessary part of a design to deceive, which would have failed if any one factor had been wanting. It is unnecessary for me to say to lawyers that such an attempt to defame, based upon the publication of false copies of a printed record, constitutes a palpable breach of the criminal law of England. As Dr. Goudy now stands face to face with that condition of things, he cannot hope to alleviate it by a retreat covered by an invitation to me to journey to England in order to bring a civil suit against him. If the Crown cannot bring him to justice, certainly I cannot.

He thus answered the suggestion he should sue. He added:

No friend of mine should imagine for a moment that it is necessary for me to take any further notice of an attack so manifestly “unwarranted and malicious.” Grotesque it is indeed that I should be called upon to defend, against the charges of a sterile pedant who never had a thought of his own a book which has been applauded for its originality and importance by many of the greatest jurists of the world.

He noted again the approval of “the greatest jurists of Germany Dr. Rudolph Sohm and Dr. von L. Mitteis,” as well as that of the Institute of France, which treated “Dr. Goudy ... with contempt,” when it honoured “my book ‘en Séance publique.’”<sup>359</sup>

American legal journals also took up the issue. In April, perhaps inspired by Taylor’s absurd papyrological allusion, and referring to contemporary issues in biblical scholarship, the *Columbia Law Review* commented that “[t]he ‘higher criticism’ is busy with this latest product of Mr. Hannis Taylor’s industry,” adding that “this pretentious work is little more than an arrangement of material gathered by the author (or shall we say, editor) from a variety of sources,” citing the reviews of Goudy and Pound. Indeed, the “problem of the ‘Genesis of Genesis’ is as nothing compared with that of the authorship of Mr. Hannis Taylor’s writings.” The reviewer also thought the book was simply bad.<sup>360</sup>

In April, *Law Notes*, a periodical more in the nature of a newspaper about legal matters than a conventional law review, included in its section of Editorial Comment an entry entitled “The Deadly Parallel and Hannis Taylor.” It started: “No law book that has recently come from the press has been reviewed more favorably by the legal journals – among them *Law Notes* – than Dr. Hannis Taylor’s ‘Science of Jurisprudence.’” It referred to Goudy’s article in the January edition of the *Juridical Review*, quoting his allegation of “gross plagiarism” in the chapter on the “external History of Roman Law,” while adding that, “by a somewhat strange coincidence,” Roscoe Pound had also found the same in his examination of the chapter on analytical jurisprudence. It also alluded to the correspondence in *The Times*. The journal noted

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<sup>359</sup> *Dr. Goudy’s Retreat. Dr. Hannis Taylor’s Parting Shot at His Assailant in London Times*, WASHINGTON HERALD, Apr. 28, 1909, at 6.

<sup>360</sup> Book Review, 9 COL. L. REV. 369, 369-70 (1909) (reviewing THE SCIENCE OF JURISPRUDENCE, *supra* note 19).

how both Goudy and Pound had used parallel passages with “telling effect.” It concluded:

It cannot well be questioned that a very strong case has been made out against Dr. Taylor. Unless he can establish the propriety of borrowing without citation or quotation marks from the writings of others, piecing the excerpts together, and offering the product to the public as an original work, he will find some difficulty in justifying himself in the eyes of the legal profession. No wonder we all thought it a mighty fine book.<sup>361</sup>

Taylor could not ignore this comment. And *Law Notes* duly published a letter from him in June. It ranged over the now familiar matter. He described himself as having “crushed” Goudy’s “original assault made in the *Juridical Review*,” given the “unlawful and unprecedented expedients” to which Goudy had resorted in “his mad effort to defame.” He referred to Goudy’s response to his letter to *The Times*, and yet again argued that Goudy had made a false claim and had altered Taylor’s text to fit the accusation, in a “stupid and ghastly attempt to defame.” He again referred to the Institute of France as “honoring” his book. He then stated it was unnecessary for him to say anything more in his defence. Once more he questioned whether Goudy’s mind was “normal.” He also claimed he was being attacked “by a small coterie at Oxford that despises everything American.” Of course, this completely ignores the criticism both of Pound and Dodd as well as the scathing account of his work in the *Columbia Law Review*. Finally, Taylor added that he regretted that “those of my fellow citizens who enjoy the abuse that has been heaped upon me, by one who has gone to the verge

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<sup>361</sup> *The Deadly Parallel and Hannis Taylor*, 13 LAW NOTES 5, 5-6 (1909).

of forgery, outnumber those who rejoice at the honours bestowed upon me in France and Germany.”<sup>362</sup>

Meanwhile, Taylor had received a copy of the review of his book in the May issue of the British *Law Magazine and Review*. The reviewer did not mention Goudy’s critique; but he was aware of it, since he quoted Mitteis from Taylor’s first letter in *The Times*, and followed Taylor’s naming of him as “Dr. von L. Mitteis.” One may speculate as to who produced this review that was a paean of praise, even noting the “epoch-making tract of Pelatiah Webster.”<sup>363</sup> It pleased Taylor sufficiently that he ensured its appearance was reported in laudatory fashion in the *Washington Herald*.<sup>364</sup>

One assumes that Taylor thought that, by attacking Goudy and claiming the British professor was prejudiced, he would create enough of a smokescreen to divert attention from the other attacks. And while Pound had showed the plagiarism as clearly as had Goudy, he had avoided using the term. Since Taylor addresses neither Pound’s nor Dodd’s criticisms, we can only guess at his motivation; but perhaps he considered it was possible for his book to be understood as showing use, but not plagiarism, and that if he ignored the criticisms of the two Americans others also would. It is also likely that he thought Goudy the softer, easier – foreign – target, and that, if he could successfully discredit him and his supposedly anti-American Oxford coterie, this would be sufficient to protect his own reputation. Others then might agree with E.B.G.’s claim in the *Yale Law Journal* that Taylor had in fact made appropriate use of his secondary sources.<sup>365</sup>

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<sup>362</sup> *Dr. Hannis Taylor’s Side of It. H. Taylor to the Editor*, 13 LAW NOTES 59, 59-60 (1909).

<sup>363</sup> Book Review, 34 L. MAG. AND REV.: A Q. REV. OF JURISPRUDENCE (5<sup>th</sup> Ser.) 359, 359 (1909) (reviewing THE SCIENCE OF JURISPRUDENCE, *supra* note 19).

<sup>364</sup> *High Tribute to Dr. Taylor’s Book*, WASHINGTON HERALD, May 21, 1909, at 6.

<sup>365</sup> E.B.G., *supra* note 328, at 290.



## VI. COPYRIGHT AND PLAGIARISM

Goudy had initially accused Taylor of plagiarism, drawing on traditional language linking it with theft of literary property.<sup>366</sup> After Taylor's book had been withdrawn from circulation in the United Kingdom, Goudy, as we have seen, challenged the American to have it circulated once more so that the holders of copyrights could sue.<sup>367</sup> Through the nineteenth century, there had been significant tension over the attitude to international copyrights in the U.S.A., which was not, for example, a signatory to the Berne International Convention for the Protection of Literary and Artistic Works of 1886. It did pass its own International Copyright Act (the "Chace" Act) in 1891; but this granted international copyright only to books manufactured in the U.S.A.<sup>368</sup> The Macmillan Company published Taylor's *Science of Jurisprudence* in New York thereby securing that act's protection. Once the U.S. division of Macmillan & Co., Ltd. of London, from 1896 the Macmillan Company had been separately owned; but the two companies remained close, however, and the verso of the half title of Taylor's book lists the London company (and its Canadian branch), indicating that it will have been distributing the work in Europe.<sup>369</sup>

The relationship between plagiarism and breach of copyright is complex.<sup>370</sup> Plagiarism may – but need not – amount to an infringement of copyright, and *vice*

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<sup>366</sup> Goudy, *supra* note 33, at 302-3. For an exploration of this, see S.P. Green, *Plagiarism, Norms, and the Limits of Theft Law: Some Observations on the Use of Criminal Sanctions in Enforcing Intellectual Property Rights*, 54 HASTINGS L.J. 167 (2002).

<sup>367</sup> Letter from Henry Goudy to the Editor (Apr. 16, 1909), *Dr. Hannis Taylor and Dr. Goudy*, THE TIMES, Apr. 22, 1909, at 19.

<sup>368</sup> Catherine Seville, *Nineteenth-Century Anglo-US Copyright Relations: The Language of Piracy Versus the Moral High Ground*, in COPYRIGHT AND PIRACY: AN INTERDISCIPLINARY CRITIQUE 19 (Lionel Bently, Jennifer Davis and J.C. Ginsburg eds. 2010); Catherine Seville, *From Pirates to Eagles: America's Changing View of Copyright*, 29 EUR. INTELLECTUAL PROP. REV. 406 (2007); CATHERINE SEVILLE, THE INTERNATIONALISATION OF COPYRIGHT LAW: BOOKS, BUCCANEERS AND THE BLACK FLAG IN THE NINETEENTH CENTURY 41-77, 146-252 (2006).

<sup>369</sup> Elizabeth James, *Letters from America: The Bretts and the Macmillan Company of New York*, in MACMILLAN: A PUBLISHING TRADITION 170, 176 (Elizabeth James ed., 2002).

<sup>370</sup> Isabella Alexander, *Inspiration or Infringement: The Plagiarist in Court*, in COPYRIGHT AND PIRACY, *supra* note 368, at 3; THOMAS MALLON, STOLEN WORDS 38 (New ed. with Afterword, 2001).

*versa*. In reality, as many authors have pointed out, the law on copyright developed primarily to protect economic interests, particularly to prevent piracy of works by other publishers;<sup>371</sup> plagiarism, on the other hand, though it may well have economic implications, is rather different. When Hannis Taylor set out to use the words and research in Muirhead's *Historical Introduction*, it was certainly not with the aim of appropriating to himself income that ought properly to have gone to the owner of that work's copyright.

It is unnecessary to trace the history of the idea of plagiarism. Conventional accounts, though potentially questionable, usually explain (indeed, it is almost a commonplace) that anxiety arose about plagiarism in particular during the Romantic era of literature with its supposed focus on originality and genius;<sup>372</sup> indeed it is possible to argue that the ideas of originality and of plagiarism were mutually reinforcing.<sup>373</sup> In an important study, Robert Macfarlane has argued that in the second half of the nineteenth century there was a reaction against the more simple notions of originality attributed to the earlier Romantic period: scholars and writers now engaged in an extensive debate, in both critical and imaginative literature, on the nature of originality and on the use of earlier material in constructing something new.<sup>374</sup> Though the considerable contemporary controversy engendered over plagiarism in the literary world and the anxieties it provoked were played out in the field of literature, as distinguished from that of general scholarship, it presented sets of potentially

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<sup>371</sup> Green, *supra* note 366, at 200-2.

<sup>372</sup> *Id.* at 175-78; Peter Shaw, *Plagiarism*, 51 THE AMERICAN SCHOLAR 325, 327 (1982); for contrasting approaches, see Martha Woodmansee, *The Genius and the Copyright: Economic and Legal Conditions of the Emergence of the "Author"*, 17 EIGHTEENTH-CENTURY STUDIES 425 (1984); Peter Jaszi, *Toward a Theory of Copyright: The Metamorphoses of "Authorship"*, DUKE L.J. 455 (1991).

<sup>373</sup> Nick Groom, *Unoriginal Genius: Plagiarism and the Construction of "Romantic" Authorship*, in COPYRIGHT AND PIRACY, *supra* note 368, at 271.

<sup>374</sup> ROBERT MACFARLANE, ORIGINAL COPY: PLAGIARISM AND ORIGINALITY IN NINETEENTH-CENTURY LITERATURE (2007).

justificatory arguments about plagiarism, and Taylor appears to have been familiar with these.

By the second half of the nineteenth century, the character of the “plagiarism hunter” had been elaborated.<sup>375</sup> An essay by Andrew Lang (1844-1912), critic and scholar, set out in 1887 what were perceived to be the main aspects of the type.<sup>376</sup> Lang noted that to accuse others of plagiarism was “most comforting to authors who have failed, or amateurs who have never had the pluck to try.”<sup>377</sup> Further, “he who is charged with plagiarism is almost invariably guilty of a literary success.”<sup>378</sup> What one needed to focus on was “the whole impact of the book.”<sup>379</sup> But “genius, or even considerable talent, can make a great deal out of stolen material.”<sup>380</sup> He pointed out that “[a]ll ideas are old.”<sup>381</sup> Those who accuse others of plagiarism “possess a little vice of their own ... the delicate veiled passion of Envy.”<sup>382</sup> Finally, “people who bring charges of plagiarism are not invariably of a delicate morality.”<sup>383</sup> A few years later, another essayist commented that accusations of plagiarism are made “simply to gratify feelings of vindictiveness and spite; a cry which usually originates in the consciousness of inferiority and is sustained by the malignancy of envy.”<sup>384</sup> In 1896, J. Cuthbert Hadden referred to Lang for the view that the “plagiarism hunt ... is mostly pursued by authors who have themselves failed;” he also pointed out that “a charge of literary piracy may be as hard to disprove as it is easy to make.”<sup>385</sup> A claim

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<sup>375</sup> *Id.* at 41-49.

<sup>376</sup> Andrew Lang, *Literary Plagiarism*, THE CONTEMPORARY REVIEW 831 (1887). I have drawn on MACFARLANE, *supra* note 374, for the literature.

<sup>377</sup> Lang, *supra* note 376, at 831.

<sup>378</sup> *Id.* at 832.

<sup>379</sup> *Id.*

<sup>380</sup> *Id.* at 833.

<sup>381</sup> *Id.* at 836.

<sup>382</sup> *Id.* at 839.

<sup>383</sup> *Id.* at 840.

<sup>384</sup> W.H.D. Adams, *Imitators and Plagiarists*, 272 THE GENTLEMAN'S MAGAZINE 502, 502 (1892).

<sup>385</sup> J.C. Hadden, *Plagiarism and Concidence*, 27 THE SCOTTISH REVIEW 336, 337 (1896).

also made by others.<sup>386</sup> The use of parallel passages printed together was attacked. Hadden remarked: “although the citation of parallel passages is not without a certain interest, the usually-accompanying expression of astonishment that such parallels should exist is indicative of nothing but a fatuous stupidity.”<sup>387</sup> Another critic likewise claimed that parallel columns with parallel passages “are employed now only too often”; he commented: “they are quite inconclusive; and it has been neatly remarked that they are perhaps like parallel lines, in that they would never meet.”<sup>388</sup>

If these remarks were principally aimed at allegations of plagiarism in works of imaginative literature, these types of phrases are repeatedly echoed in Taylor’s many letters defending his book through attacking Goudy, with their rhetoric of malice, jealousy, abnormality, falsity, anti-Americanism, and bitterness. Taylor marshals these words into an argument, presuming that the literary tropes and *topoi* used to identify a “plagiarism hunter” will be familiar to his readers. He thus emphasised that Goudy had “never been able to make a book of his own” and resented Taylor’s “intrusion into a field which he seems to consider all his own, and yet to which he has contributed absolutely nothing;”<sup>389</sup> this was no doubt because he was a “sterile pedant who never had a thought of his own;”<sup>390</sup> Goudy acted from “bitter professional jealousy” and “spiteful professional jealousy” and possessed a “passionate, prejudiced mind incapable of the critical function;”<sup>391</sup> he was a member of “a small coterie at Oxford that despises everything American;”<sup>392</sup> Goudy himself was of doubtful honesty and lacking in moral integrity – indeed he was “one who has

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<sup>386</sup> Adams, *supra* note 384, at 502.

<sup>387</sup> Hadden, *supra* note 385, at 343.

<sup>388</sup> Brander Matthews, *The Ethics of Plagiarism*, 8 LONGMAN’S MAGAZINE 621, 622 (1886).

<sup>389</sup> Letter from Hannis Taylor to the Editor (n. d.), THE TIMES, Mar. 11, 1909, at 19.

<sup>390</sup> *Dr. Goudy’s Retreat. Dr. Hannis Taylor’s Parting Shot at His Assailant in London Times*, WASHINGTON HERALD, Apr. 28, 1909, at 6.

<sup>391</sup> Letter from Hannis Taylor to the Editor (n. d.), THE TIMES, Mar. 11, 1909, at 19.

<sup>392</sup> *Dr. Hannis Taylor’s Side of It*, *supra* note 362, at 60.

gone to the verge of forgery;”<sup>393</sup> and Goudy’s mind was not “normal.”<sup>394</sup> In contrast, Taylor claims that noted scholars, such as Mitteis and Sohm, each of whom, in contrast to Goudy, had a “great mind,” had praised his book and found no problems with it; there was in fact plentiful citation of the books he was supposed to have plagiarized; and Goudy ignored the important and original thesis of the book contained in the chapter supposedly plagiarized.<sup>395</sup>

Putting to one side the originality or otherwise of Taylor’s thesis, Goudy’s critique emphasized what has become the standard view of some of the behaviour that amounts in academic contexts to plagiarism: adoption of another’s ideas without acknowledgement; copying another’s words without quotation marks; copying another’s sentences with minor changes; and adoption of another’s footnotes and sources.

Edgar Allan Poe wrote that: “When a plagiarism is detected, it generally happens that the public sympathy is with the plagiarist.”<sup>396</sup> Peter Shaw has observed that “most of the embarrassment in such cases is ordinarily experienced not so much by the accused as by those who have been confronted by his deed.” He noted that “reporters and editorialists tend to replace the word ‘plagiarism’ with uneasy euphemisms.”<sup>397</sup> He referred to the work of Alan F. Westin on “scientific plagiarism and fraud” as demonstrating that “the perpetrators have suffered less than those who exposed them.”<sup>398</sup>

Taylor must have hoped that his increasingly imaginative defences, drawing on the contemporary bogey of the “plagiarism hunter,” and his vilification of Goudy

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<sup>393</sup> *Id.*

<sup>394</sup> *Id.*; Hannis Taylor to the Editor (n. d.), THE TIMES, Mar. 11, 1909, at 19.

<sup>395</sup> Letter from Hannis Taylor to the Editor (n. d.), THE TIMES, Mar. 11, 1909, at 19. See generally, text *supra* at notes 319-21, 334-62.

<sup>396</sup> Found quoted in Shaw, *supra* note 372, at 325.

<sup>397</sup> *Id.*

<sup>398</sup> *Id.* at 326.

with his supposed anti-Americanism, together with the general desire to avoid an unpleasant topic, would lead to the final disappearance of the issue. And he was probably right – at least to some extent.

## VII. THE LATER LIFE OF HANNIS TAYLOR

Taylor continued his life of self-promotion. The evidence of at least a measure of public success in Taylor's continuing campaign to further his career through judicious use of the press is clear: according to the *Washington Post*, generally sympathetic to Taylor, in November 1909 he was rumoured to be under consideration by President Taft for a Supreme Court appointment;<sup>399</sup> later that month, he staked his claim by writing to the *Post*, arguing that one of the men appointed to the Court should be a Democrat.<sup>400</sup> Indeed in a eulogy delivered at Taylor's funeral, Bishop Shahan remarked that "Hannis Taylor would have graced the Supreme Court of the United States."<sup>401</sup> Taylor and his family continued to be frequently mentioned in the Washington papers at Society events, in particular those involving the diplomatic corps and politicians. He continued to be invited to give commencement and other addresses.<sup>402</sup> He was active in the movement for a Lincoln Memorial.<sup>403</sup> As a recent convert to Catholicism, he was much involved with the Catholic University of America, speaking at commencement and other events and helping raise funds for

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<sup>399</sup> *Taylor May Be Jurist. Taft said to be Considering Noted Lawyer and Writer. Would Name Southern Man*, WASHINGTON POST, Nov. 6, 1909, at 5.

<sup>400</sup> Letter from Hannis Taylor to the Editor (Nov. 30, 1909), Washington Post, Nov. 30, 1909, at 6.

<sup>401</sup> *Bishops Assist at Funeral of Hannis Taylor*, THE GUARDIAN [ARKANSAS], Jan. 6, 1923, at 72.

<sup>402</sup> *State's Powers Grow. Dr Taylor Tells of Change in Political Theory. Talks to Virginia Lawyers*, WASHINGTON POST, Aug. 13, 1909, at 2; *Pleads for Peace: Hannis Taylor Addresses Military Surgeons*, WASHINGTON POST, Oct. 6, 1909, at 5; *Tribute to Brewer. Hannis Taylor Honors Jurist at Memorial Service*, WASHINGTON POST, May 3, 1910, at 16; *Holy Cross Closing*, WASHINGTON POST, June 12, 1912, at 14; *Lauds Deep Learning, Hannis Taylor Loud in Praise of Catholic University*, WASHINGTON POST, June 18, 1914, at 11.

<sup>403</sup> *All for Memorial. Plan for Lincoln Monument Urged at Meeting*, WASHINGTON POST, June 7, 1910, at 1.

buildings.<sup>404</sup> Perhaps because of his adopted religion and his links with Father Ryan – whom he described in 1908 as cherishing “the lost cause ... as his forefathers had cherished the cause of Ireland” – he became involved in Irish issues, in 1919 taking part in a meeting in Washington demanding “Irish Freedom” with the “reestablishment of their national sovereignty in the Irish republic.”<sup>405</sup> He also taught at the Jesuit Georgetown Law School.<sup>406</sup> There is thus no evidence that this scandal brought any type of public ostracism.

When the First World War came, Taylor used his position and his authority as a former diplomat to oppose in public British policies, for example, blaming the British for the German adoption of the submarine warfare that sank the *Lusitania*.<sup>407</sup> Given his adoption of the cause of Irish Republicanism, one is tempted to suspect that he had turned against Britain because of his experience over the Ulsterman Goudy’s review, and the supposed “coterie at Oxford” whom he accused of despising America.

Taylor continued to publish books and articles in law journals. His next significant work was *The Origin and Growth of the American Constitution*.<sup>408</sup>

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<sup>404</sup> *Gibbons Fund Grows: Campaign Started for memorial Building at C.U.*, WASHINGTON POST, May 17, 1911, at 16; *Degrees to go to 126. Catholic University will hold Commencement Today*, WASHINGTON POST June 17, 1914, at 7; *Lively Time is Planned for Catholic Carnival: More Pocket Billiards*, WASHINGTON POST, Mar. 6, 1921, at 40.

<sup>405</sup> Found quoted in BEAGLE AND GIEMZA, *supra* note 10 at 1; *Diners Laud St Patrick: Business and professional Men Pay Tribute to Irish Patron*, WASHINGTON POST, Mar. 18, 1912; *Program at Irish Meeting*, WASHINGTON POST, Mar. 16, 1919, at 24; *Irish Turn on League: Demand Freedom before Covenant at Meeting of 15,000 Here*, WASHINGTON POST, Mar. 18, 1919, at 1.

<sup>406</sup> *Law Students to Banquet: Graduate Class at Georgetown to Gather this Evening*, WASHINGTON POST, May 20, 1916, at 7.

<sup>407</sup> *Germany Cannot Yield Until U.S. Brings Great Britain to Terms, Says Hannis Taylor*, WASHINGTON POST, July 13, 1915, at 2; *Cotton Decree a Brutal Act of Illegality, Says Hannis Taylor*, WASHINGTON POST, Aug. 24, 1915, at 2; *Brings U.S. Near War. Hannis Taylor Condemns New American Note to Germany. Puts Blame on England. Says Her Policy Provoked Submarine Murders by Germans*, WASHINGTON POST, July 25, 1915, at 3; *“War With Germany Would Put America in Great Britain’s Power” Says Hannis Taylor*, WASHINGTON POST, Sep. 19, 1915, at 8.

<sup>408</sup> HANNIS TAYLOR, *THE ORIGIN AND GROWTH OF THE AMERICAN CONSTITUTION: AN HISTORICAL TREATISE IN WHICH THE DOCUMENTARY EVIDENCE AS TO THE MAKING OF THE ENTIRELY NEW PLAN OF FEDERAL GOVERNMENT EMBODIED IN THE EXISTING CONSTITUTION OF THE UNITED STATES IS, FOR THE FIRST TIME, SET FORTH AS A COMPLETE AND CONSISTENT WHOLE* (1911).

Pelotiah Webster gets a whole chapter.<sup>409</sup> The impending publication of this led to a puff for Taylor in the *Washington Post*, which described his main works to date, quoted from the laureation address for his honorary graduation at Edinburgh, before mentioning *The Science of Jurisprudence*, describing it as “honoured by the Institute of France on March 13, 1909, the presentation being made ‘en seance [*sic*] publique’ by the famous French jurist, Rudolphe Dareste. Few American jurists have been more honoured abroad than Mr. Taylor. As a writer of law commentaries he has made a larger contribution to jurisprudence than any other Southern man.”<sup>410</sup> Two years later, the newspaper carried another piece puffing Taylor, outlining his life and publications, describing *The Science of Jurisprudence* as his “most ambitious work.” It repeated the story of Dareste and the Institute of France, “which sent Mr Taylor an engraved memorial of the event,” remarking that an “equally generous recognition came from Germany, where the highest tributes were paid by Dr. Rudolp [*sic*] Sohm and Dr. von L. Mitteis, the former the president of the German code commission, the latter the famous teacher of Roman law in the University of Leipzig.”<sup>411</sup> The strange version of Mitteis’s name again indicates the source of this piece once more to have been Taylor.

Taylor had made the aged Dareste’s presentation of his book do so much work for him that he very properly wrote to the *Washington Post* on the French scholar’s death, commenting in his final paragraph that his “natural impulse” to pay a tribute “was quickened by a sense of obligation for a very generous act, for which I could never make a proper acknowledgement while he lived.”

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<sup>409</sup> *Id.* at 139-63.

<sup>410</sup> *Hannis Taylor’s New Book*, WASHINGTON POST, Jan. 8, 1911, at S11.

<sup>411</sup> *Republish Works of Taylor: New Editions of Writings of Former Diplomat Come From Press*, WASHINGTON POST, Jan. 6, 1913, at 6.



A few weeks after a spiteful and reckless critic had poured out his wrath upon my “Science of Jurisprudence,” because I had ventured to make a discovery in his special domain, of which he never had dreamed. M. Dareste, who was impressed with it, presented the book, with the weight of his name, to the Institute of France.<sup>412</sup>

Taylor evidently had the strength of being both utterly shameless and imaginative with the truth. He was happy to rewrite history in his favour, creating an account of events that progressively departed from or obscured reality. His references to Dareste, Mitteis, and Sohm all served this purpose, as well as providing a means of attack on Goudy. His strategy may have worked, but only to some extent. His hero Roosevelt might have described him in 1913 as a true scholar,<sup>413</sup> but others were more sceptical. On October 17, 1908, Oliver Wendell Holmes received a complimentary copy of *The Science of Jurisprudence*. When he wrote the next day to Sir Frederick Pollock he commented that he did not believe that Taylor “has anything whatever to say except to repeat what is well known.”<sup>414</sup> Towards the end of 1916, Holmes revealed to Harold Laski that he was reading Taylor’s recently published *Cicero*, the young Englishman replied: “I had rather read Cicero than Hannis Taylor. He touches nothing that he does not plagiarise.” Holmes agreed.<sup>415</sup> His view of Taylor had progressed beyond unoriginality. Later Laski commented to Holmes on an approaching case in the Supreme Court: “What a perfectly fiendish day you will have

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<sup>412</sup> Letter from Hannis Taylor to the Editor (Apr. 25, 1911), *Praises Dead Jurist. Hannis Taylor Lauds M. Dareste, Who Led Profession in France*, WASHINGTON POST, Apr. 26, 1911, at 11.

<sup>413</sup> THEODORE ROOSEVELT, HISTORY AS LITERATURE AND OTHER ESSAYS, 198 (1913).

<sup>414</sup> Letter from O.W. Holmes to Sir Frederick Pollock (Oct. 18, 1908), in 1 POLLOCK-HOLMES LETTERS, *supra* note 14, at 143-44.

<sup>415</sup> Letter of O.W. Holmes to H.J. Laski, (Dec. 26, 1916), in 1 HOLMES-LASKI LETTERS, *supra* note 27, at 46-47; Letter of H.J. Laski to O.W. Holmes (Dec. 28, 1916), in 1 HOLMES-LASKI LETTERS, *supra* note 27, at 47-48; Letter of O.W. Holmes to H.J. Laski (Dec. 31, 1916), in 1 HOLMES-LASKI LETTERS, *supra* note 27, at 49; HANNIS TAYLOR, A SKETCH OF HIS LIFE AND WORKS: A COMMENTARY ON THE ROMAN INSTITUTION AND ROMAN PUBLIC LIFE, SUPPLEMENTED BY THE SAYINGS OF CICERO ARRANGED FOR THE FIRST TIME AS AN ANTHOLOGY (1916).

on Monday, with the prince of literary thieves, Hannis Taylor, as counsel.” Holmes commented: “Taylor only submitted a brief on the Draft.” He added:

Reading one of his anarchist manifestos in one of the cases, I relieved my mind to my neighbour Vandevanter by whispering “I do despise a martyr. He is a pigheaded adherent of an inadequate idea” – and then I felt better.<sup>416</sup>

The recent biographers of Father Abram J. Ryan hint that there may have been some impropriety by Taylor in his probable role as trustee under Ryan’s will, as it is unclear what happened to what they speculate might perhaps have been large royalties from Ryan’s poetry. But there is no evidence to support adding a charge of actual theft to that of literary theft.<sup>417</sup> In fact it seems improbable, even if Taylor’s reconstruction of facts in his letters to the newspapers shows that, when he felt under threat, he could be deliberately misleading.

Taylor’s biographer, McWilliams, sees him as an ultimately frustrated man: one full of ambition that was never fulfilled.<sup>418</sup> It is a plausible interpretation. For example, Taylor must have been delighted to have been included in the second volume of *Men of Mark in America* in 1906. The strongly autobiographical flavour of the entries in the volumes means that the account gives significant insight into the mind of the man. It is a boastful parade of achievements, though, to be fair, the format does encourage this. The entry emphasizes that from youth Taylor had “a special fondness for books and study.” It notes that his work on *International Public Law* was “characterized by the ‘Harvard Law Review’ as ‘the best American work since Wheaton,’ and by the ‘Law Quarterly Review’ of London, England, as ‘the fullest treatise in the language on its subject.’” His work on *The Origin and Growth of the*

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<sup>416</sup> Letter of H.J. Laski to O.W. Holmes (Dec. 8, 1917), in 1 HOLMES-LASKI LETTERS, *supra* note 27, at 116-18; Letter of O.W. Holmes to H.J. Laski (Dec. 15, 1917), in 1 HOLMES-LASKI LETTERS, *supra* note 27, at 118-19.

<sup>417</sup> BEAGLE AND GIEMZA, *supra* note 10, at 252-254.

<sup>418</sup> MCWILLIAMS, *supra* note 8, at 88-89.

*English Constitution* was described as “formally adopted as a text-book by the senate of the University of Dublin and is used in the Universities of Oxford and Edinburgh and as a text-book or book of reference by many of the leading American universities and law schools.” It lists his possession of the honorary degree of LL.D. from Dublin, Edinburgh, and six U.S. universities, noting he collected those from Edinburgh and Dublin “in person.” His desire for recognition as a scholar is almost painful to read.<sup>419</sup> Dublin in fact decided to award the degree to Taylor in 1901,<sup>420</sup> but he was unable to attend for its award until 1904, by which date Edinburgh had also decided to award him the degree.<sup>421</sup> He made a special trip to the United Kingdom to collect both in 1904, and no doubt enjoyed the attention and the extensive reporting of the awards in the press.<sup>422</sup> The *Nottingham Evening Post*, in its “Today’s Gossip” section, noted the award to him of the degree of LL.D. by the University of Edinburgh, before commenting: “[w]ith Dr. Taylor the reception of honorary degrees may almost be said to have ‘degenerated into a habit.’”<sup>423</sup>

McWilliams notes the “zealous, impulsive, self-assuming qualities of [Taylor’s] personality.” He comments that “it was ... his tragedy that he could not satisfy his own deep yearning for fame.”<sup>424</sup> It is easy to suspect that this led him overly to value the outer trappings of distinction. By his death he had acquired no

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<sup>419</sup> 2 MEN OF MARK IN AMERICA: IDEALS OF AMERICAN LIFE TOLD IN BIOGRAPHIES OF EMINENT LIVING AMERICANS, 336-37 (M.E. Gates, ed. 1906).

<sup>420</sup> *Trinity College. Honorary Degrees*, THE IRISH TIMES, June 5, 1901, at 5; *Dublin University Honors American*, THE WEEKLY NEWS-REVIEW, Aug. 2, 1901, p. 7.

<sup>421</sup> *University of Edinburgh. Honorary Degrees*, THE SCOTSMAN, Feb. 9, 1904, p. 4.

<sup>422</sup> *To Be Honored Abroad. Degree of LL.D. To Be Conferred on Hannis Taylor*, EVENING STAR, June 17, 1904, at 1; THE DAY, June. 8, 1904, at 11 (reporting will be awarded the degree in Dublin on 30 June and in Edinburgh early in July); *Graduation Ceremonial at Edinburgh University*, THE SCOTSMAN, July 9, 1904, p. 10; *Graduation Ceremonial at Edinburgh University*, EVENING STAR, July 21, 1904, p. 5. The actual award to him of the degree of LL.D. is not recorded in the Catalogue of Graduates of Trinity College, Dublin (private communication from Manuscripts & Archives Research Library, Trinity College); but it is difficult to believe he made up the actual award, even if his claims of recognition achieved need sometimes to be taken *cum grano*.

<sup>423</sup> *Today’s Gossip. Distinguished Jurist*, NOTTINGHAM EVENING POST, July 15, 1904, p. 2.

<sup>424</sup> MCWILLIAMS, *supra* note 8, at 89.

fewer than eight honorary doctorates from U.S. universities, as well as those from Dublin and Edinburgh that he had collected in 1904.<sup>425</sup> It was presumably this impulsiveness and consuming need for recognition that led him to cultivate the art of plagiarism.

## VIII. CONCLUSION

Nothing is more apt to cause disquiet and upset than to point out that the Emperor wears no clothes. Criticism of the scholarship of any man or woman of supposed distinction, especially an argument that his or her work may be plagiarized, is apt to rebound on the critic, no matter how justified and well supported the allegation. The discomfort felt by readers and onlookers results in criticism of the individual who points out the wrong. One suspects that many felt that Taylor's plagiarism was dirt best swept under carpet – an unpleasant smell best ignored, to change the metaphor. Though himself plagiarized, Holland commented that he had “no desire to take part in a very disagreeable controversy.”<sup>426</sup> Mackintosh similarly described it as an “unpleasant controversy.”<sup>427</sup> Goudy must have been aware of this likely attitude. Yet he did not shirk from what he saw as his duty. Whittuck, who knew him well from the Grotius Society, observed: “It was characteristic of the late Professor to regard all social questions in the first place from a moral standpoint. Anyone he thought not to be playing the game, whether an individual or a nation, he was prompt to denounce.”<sup>428</sup> His review of Taylor's work is the best example.<sup>429</sup> Indeed, it is obvious he decided not to qualify what he said in any way – he wanted to

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<sup>425</sup> C.S.B., *Obituaries: Hannis Taylor*, 33 PROCEEDINGS OF THE AM. ANTIQUARIAN SOC'Y 11 (1923).

<sup>426</sup> Letter from T.E. Holland to the Editor (Mar. 13, 1909), *Dr. Hannis Taylor and Dr. Goudy*, THE TIMES, Mar. 15, 1909, at 4.

<sup>427</sup> Mackintosh, *supra* note 347, at 178.

<sup>428</sup> Whittuck, *supra* note 247, at xxviii.

<sup>429</sup> *Id.*; Lawson, *supra* note 113, at 83 gives another example.

make sure his message was unmistakable. He did not choose the easy path of obscure allusion only meaningful to the knowing few. His defence of academic standards and of the scholarly property of his teacher James Muirhead does him credit. His belief in truth and the integrity of scholarship meant that he did not shy away from unpleasantness in the cause of truth and scholarship, even when it involved him in considerable trouble, and was to bring about a most vicious public attack both on his character and on the motivation for his actions.

Taylor may have painted Goudy as some malicious, spiteful, jealous, xenophobic and abnormal Oxford don; but those who knew him knew this to be far from the truth. “He was a man who was always on the side of progress, and he was particularly zealous in the cause of legal education,” recorded one obituarist.<sup>430</sup> The historians of the Society of Public Teachers of Law, in the establishment of which he was so involved, described him as “a well-known Oxford Professor with a reputation for radical views.”<sup>431</sup> De Zulueta described Goudy as never failing “in the great duty of a university teacher to hold up the highest standard as alone worthy of endeavour.”<sup>432</sup> His life in general was one of moral purpose, endeavour, and service, concerned with duty and responsibility. His Ulster and Scottish Calvinist background led him to the view that talents were to be used, not hidden; there was a moral requirement to act. Thus, in international affairs, he felt it his duty to be engaged beyond his legal work: in 1912, under the auspices of the Peace Society, he signed a protest against the Italian attack on Tripoli;<sup>433</sup> he supported a memorial setting out conditions for a lasting peace in the Balkans in 1913;<sup>434</sup> and in 1919 he signed a letter as a friend of Italy and one knowledgeable about the Tyrol on where the boundary

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<sup>430</sup> *Obituary Notices. Henry Goudy*, 2 Brit. Y.B. Int'l L. 209 ()

<sup>431</sup> COWNIE AND COCKS, *supra* note 217, at 4.

<sup>432</sup> De Zulueta, *supra* note 5, at xxiii.

<sup>433</sup> *The War in Tripoli. A Juridical Protest*, THE TIMES, Feb. 2, 1912, at 5.

<sup>434</sup> *The Conditions of Lasting Peace*, THE TIMES, Mar. 27, 1913, at 5.

should be drawn between Italy and Austria.<sup>435</sup> The same sense of duty made him sign the British Covenant in 1914.<sup>436</sup> He was willing to stand up and be counted. In one view, he was simply a high-minded Victorian, concerned with many causes ranging from schooling, the education and conditions of the working classes to the protection of rights of way, allowing access to the countryside for the health of the population;<sup>437</sup> but there can be little doubt but that he also saw himself through a lens provided by his “Ulster-Scots” identity. This was an ethnically and religiously complex sense of self, perceived to involve sobriety, moral rectitude, hard work, concern with civil and religious liberty, and courage.<sup>438</sup> These were the values by which he attempted to live. It was they that gave him his independence of mind and led him to question authority. It was they that provided the standards by which he judged his own behavior. It was the strong sense of duty engendered by these values that led him to consider that he had uncompromisingly to expose the fraud and falsity of Hannis Taylor.

The obituarist in the *Oxford Magazine* observed: “Goudy’s fine presence and dignified utterance made him an impressive figure in the ceremonies of the university.”<sup>439</sup> In similar vein, his obituarist in *The Times* referred to his discharging his formal duties at the Encaenia “with pre-eminent grace and dignity,” while his lecturing “combined an impeccable dignity and distinction with solid learning.” He was often described as as having an “austere dignity” or as “dignified.”<sup>440</sup> His response to Taylor’s outrageous attacks could certainly be characterised as such. It

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<sup>435</sup> *The Tyrolese Frontier*, THE TIMES, Jun. 30, 1919, at 8.

<sup>436</sup> *British Covenant*, THE SCOTSMAN, Mar. 12, 1914, at 1.

<sup>437</sup> *Scottish Rights-of-Way Society*, THE SCOTSMAN, Nov. 3, 1892, at 7. See *supra*, text at notes 91-93 and 210-15 on his other concerns.

<sup>438</sup> A.R. Holmes, *Presbyterian Religion, Historiography, and Ulster Identity, c. 1800 to 1914*, 52 HISTORICAL J. 615 (2009).

<sup>439</sup> *Obituary: The Late Professor Goudy*, *supra* note 5, at 273.

<sup>440</sup> *Death of Professor Goudy. An Able Jurist*, THE TIMES, Mar. 4, 1921, at 15; De Zulueta, *supra* note 5, at xxiii; *Obituary: The Late Professor Goudy*, *supra* note 5, at 273. Though anonymous, comparison suggests that De Zulueta also wrote the obituary of Goudy in THE TIMES as well as that in the OXFORD MAG., *supra* note 5.

must be remembered that Goudy also presented an impressive appearance. One of his Edinburgh students described him as having a “striking face and tall, commanding figure.”<sup>441</sup> Another Scots lawyer referred to his “tall, impressive figure” and “arresting face.”<sup>442</sup> His *Oxford Magazine* obituary referred to his making a “familiar and distinguished figure.”<sup>443</sup> Müller simply remembered him as “one of the most beautiful men [he] had ever seen in his life.”<sup>444</sup>

Goudy “was no recluse,” according to de Zulueta.<sup>445</sup> He liked to discuss politics. He enjoyed fishing and golf. Until his illness affected him, he was sociable.<sup>446</sup> He was a “clubbable” man; indeed he was a member of the Reform Club, and had once also been a member of the National Liberal Club.<sup>447</sup> De Zulueta characterized Goudy as possessing “a certain austere dignity,” but added that “he was a most lovable companion.”<sup>448</sup> An advocate junior to him at the bar, Scott Moncrieff Penney, stated that “in spite of a somewhat reserved manner, he was always accessible and genial.” The *Oxford Magazine* commented that he could be mistaken for being aloof, but “aloofness was [not] any part of his nature; far from it. The kindness and geniality of his disposition were most marked.”<sup>449</sup> He had “a genius for friendship.”<sup>450</sup> His former assistant described him as “popular with his brethren generally, when they came to realise the warm heart and genial disposition that lay

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<sup>441</sup> Whyte, *supra* note 112, at 161.

<sup>442</sup> Letter from S. Moncrieff Penney to the Editor (Mar. 8, 1921), *The Late Professor Goudy*, THE SCOTSMAN, Mar. 14, 1921, at 9.

<sup>443</sup> *Obituary: The Late Professor Goudy*, *supra* note 5, at 273.

<sup>444</sup> Von Müller, *supra* note 4 at 342: (“der einer de schönsten Männer war, die ich in meinem Leben sah.”)

<sup>445</sup> De Zulueta, *supra* note 5, xxv.

<sup>446</sup> *Obituary: The Late Professor Goudy*, *supra* note 5, at 273-74.

<sup>447</sup> GOWDY, *supra* note 43, at 230.

<sup>448</sup> De Zulueta, *supra* note 5, at xxiii.

<sup>449</sup> *Obituary: The Late Professor Goudy*, *supra* note 5, at 273.

<sup>450</sup> Whittuck, *supra* note 247, at xxviii.

behind a certain shy reserve of manner.”<sup>451</sup> If Goudy at first appeared distant and reserved, people warmed to him because of his genuine friendliness.

Given Goudy’s reported geniality, it is unsurprising that De Zulueta stated that he was “extremely popular” with undergraduates, and was “sympathetic, inspiring, alive, ever ready to help a pupil or a younger colleague.”<sup>452</sup> This assessment explains von Müller’s description of his enjoyment of the beauty of the view of the great inner quadrangle of All Souls, in which he commented on the enhancement of his pleasure if, while he was enjoying the prospect, the beautiful Dr Goudy appeared.<sup>453</sup> No doubt “his enthusiasm for his special subject” and skill as a lecturer further enhanced his reputation with his classes.<sup>454</sup> One of his students in Edinburgh described him as “a born teacher,” who “never missed an opportunity of helping his students – even a small thing that might interest or instruct them did not escape him.”<sup>455</sup>

Goudy may have been austere, high-minded, dignified, and proper; but he was neither prig nor narrow pedant.<sup>456</sup> Indeed his very choice of title for his defence of the work of his teacher Muirhead shows a playful mind. It can be no coincidence that “Plagiarism – A Fine Art” is so reminiscent as a title of that of the famous satirical essay, “On Murder Considered as One of the Fine Arts,” by Thomas De Quincey (1785-1859), first published in *Blackwood’s Edinburgh Magazine* in 1827.<sup>457</sup> De Quincey does not appear among the authors whose works Goudy borrowed from the Advocates Library, but this means little. It is near inconceivable that a man with Goudy’s wide literary tastes – from Walter Scott to Walter Pater – would not have

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<sup>451</sup> Mackintosh, *supra* note 50, at 54.

<sup>452</sup> De Zulueta, *supra* note 5, at xxiii.

<sup>453</sup> Von Müller, *supra* note 4, at 342.

<sup>454</sup> *Obituary: The Late Professor Goudy*, *supra* note 5, at 273.

<sup>455</sup> Whyte, *supra* note 112, at 163.

<sup>456</sup> A point specifically made in *Obituary: The Late Professor Goudy*, *supra* note 5, at 274.

<sup>457</sup> Thomas De Quincey, *On Murder Considered as One of the Fine Arts*, in THOMAS DE QUINCEY, *ON MURDER* 8 (Robert Morrison ed. 2009). This modern edition contains all three essays by De Quincey on the topic. The initial essay has recently been issued as a Penguin Classic: THOMAS DE QUINCEY, *ON MURDER CONSIDERED AS ONE OF THE FINE ARTS* (2015).



known it.<sup>458</sup> In his witty essay, which ranges over the history of murder and contemporary murders, De Quincey mentioned S.T. Coleridge (1772-1834) and the platonic ideals he had imbibed from his adoption of German transcendental and idealist philosophy, alluding to Coleridge's rather laboured discussion of the ideal of an inkstand. He also refers to the perfect or ideal thief.<sup>459</sup> In the same year, De Quincey denounced plagiarism hunters.<sup>460</sup> But in 1834, De Quincey revealed – not unsympathetically – that the now dead Coleridge had been a plagiarist.<sup>461</sup> Coleridge's most significant plagiarism was of the work of those German idealist, basically post-Kantian, philosophers, notably F.W.J. von Schelling, with whose ideas he had so laboured in discussing the very inkstand which he used to steal from others;<sup>462</sup> Coleridge's plagiarism was later exposed much more fully, and much less sympathetically, in *Blackwood's Magazine* in 1840 by James F. Ferrier (1808-1864), Professor of Moral Philosophy at St Andrews, and a powerful Scottish representative

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<sup>458</sup> NLS, *Advocates Receipt Books*, *supra* note 92, FR 278, at 196 (Feb. 12, 1877: WALTER SCOTT, *PEVERIL OF THE PEAK* (date of edition undisclosed)) and FR 281, at 294 (Feb. 2, 1893: WALTER PATER, *MARIUS THE EPICUREAN* (London, Macmillan 1885)). He borrowed other Waverley novels over the years.

<sup>459</sup> De Quincey, *supra* note 457, at 11-12; S.T. Coleridge, *Letter IV: To A Junior Soph at Cambridge*, 10 *BLACKWOOD'S EDINBURGH MAGAZINE* 255, 256-57 (1821); further on the inkstand, see Robert Morrison, *Opium-Eaters and Magazine Wars: De Quincey and Coleridge in 1821*, 30 *VICTORIAN PERIODICALS REVIEW* 27, 35-36 (1997). On the parallels of De Quincey and Coleridge, see Nigel Leask, "Murdering One's Double: De Quincey's 'Confessions of an English Opium Eater' and S.T. Coleridge's 'Biographia Literaria,'" 13:3 *Prose Studies* 78 (1990); NIGEL LEASK, *BRITISH ROMANTIC WRITERS AND THE EAST: ANXIETIES OF EMPIRE* 170-228 (1992).

<sup>460</sup> Macfarlane, *supra* note 374, at 41-42.

<sup>461</sup> [Thomas De Quincey], *Samuel Taylor Coleridge*, 1 *TAIT'S EDINBURGH MAGAZINE* 509 (1834); [Thomas De Quincey], *Samuel Taylor Coleridge*, 1 *TAIT'S EDINBURGH MAGAZINE* 588 (1834). His account of Coleridge continued over several issues into 1835; see also Shaw, *supra* note 372, at 335. For an interesting consideration of what was meant by plagiarism in this context, see T.J. MAZZEO, *PLAGIARISM AND LITERARY PROPERTY IN THE ROMANTIC PERIOD* 17-48 (2007). De Quincey himself was later shown to have been a plagiarist: ALBERT GOLDMAN, *THE MINE AND THE MINT: SOURCES FOR THE WRITINGS OF THOMAS DE QUINCEY* (1985).

<sup>462</sup> See Nicholas Reid, *Coleridge and Schelling: The Missing Transcendental Deduction*, 33 *STUDIES IN ROMANTICISM* 451 (1994); G.N.G. Orsini, *Coleridge and Schlegel Reconsidered*, 16 *COMPARATIVE LITERATURE* 97 (1964); T.R. Simons, *Coleridge Beyond Kant and Hegel: Transcendent Aesthetics and the Dialectic Pentad*, 45 *STUDIES IN ROMANTICISM* 465 (2006). Two of Coleridge's inkstands survive: one (rather grand) is at Coleridge Cottage in Nether Stowey, Somerset, and the other is at the Longfellow Historic National Site in Cambridge, MA.

of idealist philosophy.<sup>463</sup> A defence of Coleridge was put forward by his daughter in the edition of his *Biographia Literaria* that appeared in 1847.<sup>464</sup> This defence, along with its appearance in subsequent editions, served to keep the issue current through the nineteenth century; indeed, the issue of Coleridge's plagiarisms and how to understand them remains current among scholars of his work.<sup>465</sup> There is no way of knowing whether Goudy knew all this; but the title of De Quincey's essay, with its brief discussion of the thinking on German idealism of a plagiarist, might well have appealed to him. One also suspects that in deciding to write about Taylor's plagiarisms, he may have consulted Ferrier's well-known essay, which would have led him to De Quincey. He would certainly have agreed with Ferrier's comment on Coleridge that "plagiarism, like murder, sooner or later *will out*."<sup>466</sup>

It is important to remember that Goudy's obituarist in the *Oxford Magazine* described him as being "in the general social life of the College ... ever a popular and valued member."<sup>467</sup> One suspects that the learned, whimsical humor that he displayed in entitling his essay played a part in this. For example, unlike many of his professorial colleagues who were also members of All Souls, he regularly recorded bets in the College's betting book.<sup>468</sup> These were varied in topic, but often playful in nature, varying through the number of humps of a Bactrian camel, election results, Derby winners in the 1860s, changing share values, to the age of the cricketer, W.G.

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<sup>463</sup> [J.F. Ferrier], *The Plagiarisms of S.T. Coleridge*, 47 BLACKWOOD'S EDINBURGH MAGAZINE 287 (1840).

<sup>464</sup> Sara Coleridge, *Introduction*, in 1 S.T. COLERIDGE, *BIOGRAPHIA LITERARIA, OR BIOGRAPHICAL SKETCHES OF HIS LITERARY LIFE AND OPINIONS* v, v-xlviii (2<sup>nd</sup> ed. by H.N. and Sara Coleridge, London 1847).

<sup>465</sup> Andrew Keanie, *Coleridge and Plagiarism*, in THE OXFORD HANDBOOK OF SAMUEL TAYLOR COLERIDGE 435 (F. Burwick ed., 2009); Andrew Keanie, *Coleridge: The Damaged Archangel*, 56 ESSAYS IN CRITICISM 72 (2006); Shaw, *supra* note 372, at 333-36; MALLON, *supra* note 370, at 26-37. The Modern discussion starts with Thomas McFarland, *Coleridge and the Pantheist Tradition* 1-52 (1969) and Norman Fruman, *Coleridge: The Damaged Archangel* (1971).

<sup>466</sup> Ferrier, *supra* note 463, at 299.

<sup>467</sup> *Obituary: The Late Professor Goudy*, *supra* note 5, at 274.

<sup>468</sup> CHARLES OMAN, *THE TEXT OF THE SECOND BETTING BOOK OF ALL SOULS COLLEGE, 1873-1919*, 9 (1938).

Grace;<sup>469</sup> but anyone who could bet on whether or not F.E. Smith, then Fellow of Merton College, would be sent to prison after his appearance in the magistrates court in Oxford following the disturbances during the Prince of Wales's visit had an endearingly mischievous sense of humor.<sup>470</sup> The same slightly irreverent humor comes through other bets such as one that there would be no Zeppelin raid on Oxford during the visit of the French professors in 1916.<sup>471</sup> Colleagues who entered a bogus bet that Goudy would sing "Mandalay" at the next Bursar's dinner, forging his name as "Hendrick Goudij" to tease him for supposed pro-Boer views in 1900, obviously felt affectionately towards him (another colleague is teased in the same bet by apparently signing by his mark as an illiterate).<sup>472</sup>

De Zulueta stated of Goudy that "the stimulus of vanity was entirely lacking" and that "[s]elf-advertisement and publicity were alien to him."<sup>473</sup> Goudy's sense of humor and the affection in which he was held support this view. The contrast is obvious with the self-important, self-promoting, and, one suspects, humorless Taylor. Any man whose "Christmas Eve celebration included gathering the family around him and instructing one of the older children to read aloud from the scrapbook of newspaper clippings that told the story of his multifaceted career" was essentially devoid of any sense of humor, irony, and the ridiculous.<sup>474</sup> Taylor's writings were not about advancing scholarship, but about advancing his own career and bolstering his own self-image: hence his willingness to cheat and appropriate others' work. In

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<sup>469</sup> *Id.* at 119 (no. 415), 121 (no. 425), 122 (no. 431), 125 (nos. 449, 450, 451), 127 (no. 465), 129 (no. 478), 130 (no. 483), 131 (no. 485), 132 (no. 491 – "bogus" bet), 133 (no. 498), 138 (no. 526), 140 (no. 540), 141 (no. 543), 145 (no. 567), 149 (592), 156 (no. 633), 161 (no. 651), 167 (no. 687), 174 (no. 729), 175 (nos. 733, 736, 737), 178 (no. 749).

<sup>470</sup> *Id.* at 125 (no. 451).

<sup>471</sup> *Id.* at 175 (no. 733); *A French Visit to Oxford*, THE TIMES, May 26, 1916, at 5; *French Professors' Visit*, THE TIMES, May 30, 1916, at 3.

<sup>472</sup> OMAN, *supra* note 468, at 132 (no. 491).

<sup>473</sup> De Zulueta, *supra* note 5, at xxv.

<sup>474</sup> MCWILLIAMS, *supra* note 8, at 89.

contrast, Goudy maintained the high standards to be expected of one who understood and valued scholarship.

Goudy may be a minor figure; but he played a crucial role in the development of the Oxford Law School. He was also important in the development of the study of Roman law in Britain at the beginning of the twentieth century. In this we may focus, not so much on his own scholarly contribution (though one should note that Ehrlich, in the introduction to his translation of Goudy's *Trichotomy*, directly compared the work of Goudy to that of Cornelis van Bijndershoek and Gerard Noodt, Dutch elegant scholars of Roman law),<sup>475</sup> but rather on his development of links with significant foreign scholars such as Lenel, Gierke, and Girard. Like his teacher Muirhead, he was keen to open up British scholarship to further European influence, an endeavour to which the First World War put a temporary halt. It is worth noting, however, that, thirty years after Goudy's death, the now famous Fernand De Visscher, visiting Oxford to give two lectures, after thanking those who had made his visit possible (Herbert Jolowicz and Ronald Syme), reminisced:

To this honour must be added the pleasure ... to find myself again in this very College of All Souls where – long ago – I spent so many months of study and prepared my first publication on roman [*sic*] law, which was to be dedicated to a Fellow of the College, Professor Goudy.<sup>476</sup>

After yet another war, the world of scholarship was opening up once more, the world that Goudy had been committed to developing and furthering. It is good that a man of his principles, kindness, and integrity was remembered.

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<sup>475</sup> Ehrlich, *supra* note 195, at [III]-IV.

<sup>476</sup> Single sheet, Archives de l'Université Catholique de Louvain, Fonds Fernand De Visscher, numéro 190. I have not had access to all of De Visscher's publications to locate the specific dedication.